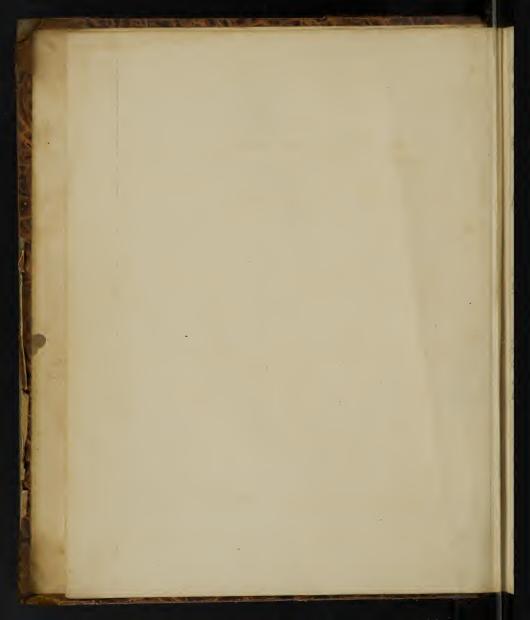




Get Gould Jay (n. Cy. 1830. th May 13th



Criminal Carr That branch of municipal law which treats of public mrongs is called criminal law, - pleas of the crom, or crown law. 4 136.2. The term public mornings includes all cromes + misdemesnors - i.e all offences agt municipal lan: For all mongs are not offences. 4 Bl. 1. Public mongs are of = fences agt the State in its aggregate capacity. Privata virongs are offences agt private persons it. A crime, or misdemesnor, is an act committed, or omit= ted, in violation of a public law, forbidding, or commanding it .4 Bl. 5. The words, crimes (and misdemes nors, are strictly syrony = mong; - this in common acceptance, the former denotes offences of the more attraciones kind, the latter those of the left herroug character. I'M. J. A crime or misden" of any kind is an infraction, or vio lation, of a public right, inherent in the whole flate, or Community, in its aggregate capacity. A civil injury is an infraction of a private rights. In almost Every case, a public mong actually includes a civil injury et afrault +battery is a violation of public forace , & private security for of libel, murder, theft, There are other cases, in which a put mong may or may not, include, or produce a civil injury: as a put.

And in these cases the object of the law is, to give, as far as possible, a trofold redress. - i.e. to the public, + to the individual - fourishment for the put wrong, dama? for the civil injury. ~+ 186.5-7.

Vet if the offence amounts to felony, the private injury is, regularly, at C. L. merges in the crime or no private red dress can be had. ex. Freason murder, Larceny 4 H. 5.6 Bull. 181. 2 Roll. 3 J. J. L. S. 10. 1 mod. 283. 5 Com. 582.

The doctrine of merger has been said to be founded on the policy of the law; the object of which is to provent the compounding of felonies on private satisfaction and thus criminals' escaping punishment. But the only one and rational foundation feering to be, that in cases of lelong the punishment, for the public mong, renders private redrefs, for the civil injury, impossible; the punishment, being, in general, a porfeiture of life and property. 4 PU.6. Str. 873. L. 1572. 3 J. R. 196-7. arg. — This rule, not practically harsh crown generally does justice to individual.

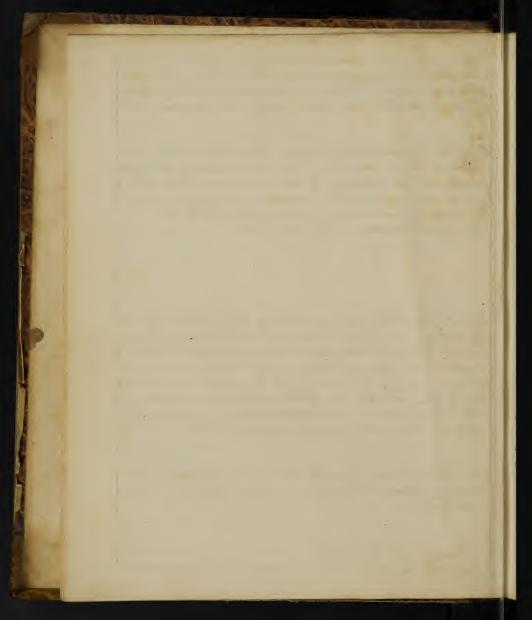
If a crime, not amounting to felony, injures an induirdual, he has his private Homesy. The doctrine of merger does not apply: The coine does not work a forfeiture of life or propporty. Ex. Clibel, battery, put misance. 414.5.

The Cont., this doctrine of mengor feeing not to have been regarded. Civil fuits have been here sustained for perpuny, andon, oc. Forfeiture of props. for crimes, here, takes of place only in two cases destroying magazines or of U.S. in time of peace of manslanghter. That's cont. And in neither case is life forfeiters.

The right of bunishing for crimes is founded on the law of nature; I in Jomes instances, authorized by the rerealed Clar of Gods; as in case of murders! This
right, in a flate of nature, may vested in every inairidual, injured by a crime; for it must have existed
Jomerhere as otherwise there would be no execution of
the law of nature no fanction; and it cannot exist,
elsewhere than in the individ: injures. I Tol. 7.

In a state of civil fociety, this right resides in the Covereign former; & men are no longer their own judges of averages.

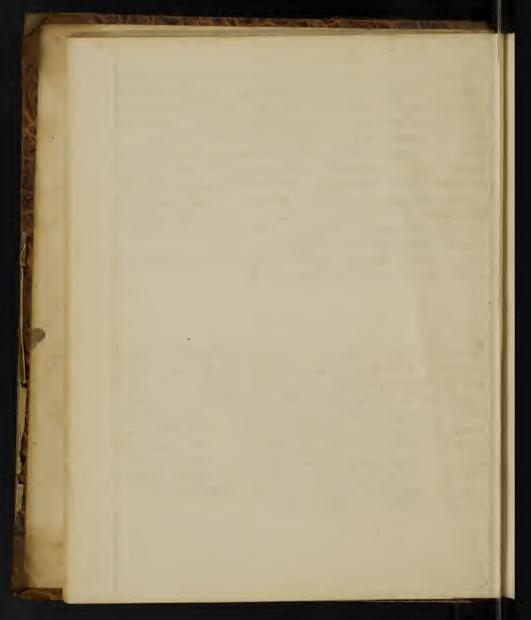
Society right to Junish is said, by some, to be derived from the consent of its members, express, or tacil; +



therefore, to be founded on compact. I M. 8. This foundation is broad enough to authorize most punishments, but not all. Ex. not Jufficient for capital punishments for mala prohibita; nor any punishment for such offences—for auch could not exist in a state of nature. But, in regard to the right of society to punish offences mala in Je, a consistent theory may be made out from compact: For in these cases, the individual, who had the right to punish, in a state of nature, might transfer it. This notion of compact is, homever, very artificial, and wholly undecepany. It I s-g. Tattell (quarte) J4. Saleyp moral Thelosophy 341, se. 2 Burlemagne 142. Consent of the Chiminal can, in no case, be sufficient to authorise capital punishment. Did.

But the most rational o broad ground of the right of punishing, not only in case of mala prohibits, but of all offences, is (Nerfediency, or 2) necessity; for what is expedient, is agreeable to the law of redson agree able to justice. Men are formed for civil fociety: But civil society cannot exist, without a right of bundshing for offences agt the society. A forereign state, the regarded as a moral person, has different attributes, from those of a natural person — different rights, different duties — aifferent nature, of espence. Tattell, pref. 7.8.

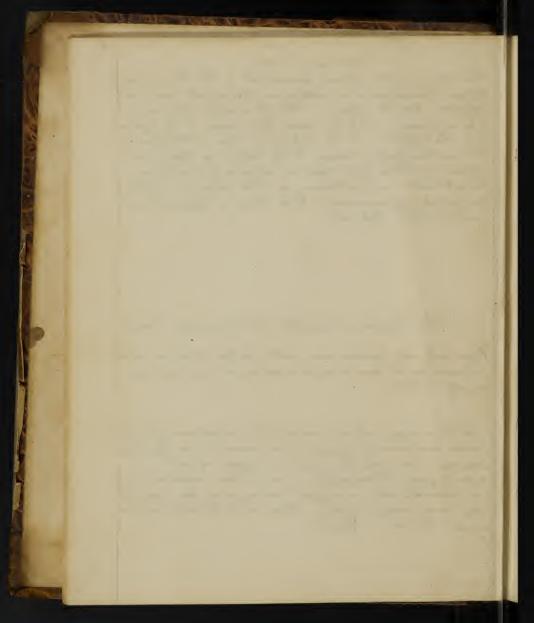
176ale 13. 478. 9. 10. Taley. 349. oc.



The end of all human purnishme is the prevention of crimes: Tamishment is neither an atonement, nor a sate is faction, for the injury. — The browention of crimes is to be attained in one, or more, of 3 mays. I By reforming the offender. D. By debriving him of the power of committing future crimes. 3. By determing others from offending! The first object is attained by disciplinary punishment—as penetentiary oe: The second, by death or perbetual imporsonment: The third, by infamous punishments. It is also with

Regularly, all persons are liable to Junishm. for disselection to the large, except such as are expressly exemples 478 20.

All the excuses, which exempt the perpetrator of a forbidden act, from punishmet, are reducible to the single consideration— no. the mant, or defect, of will—i.e. moral agency. To constitute a crime, there must be a will ta forbidden act, or reglect, concurring: for, nemo fit reus, misi mens sit rea.— Scans as to forcible civil injunes. 4781. 20-1. I Hank. 2.



Coiminal Garr.

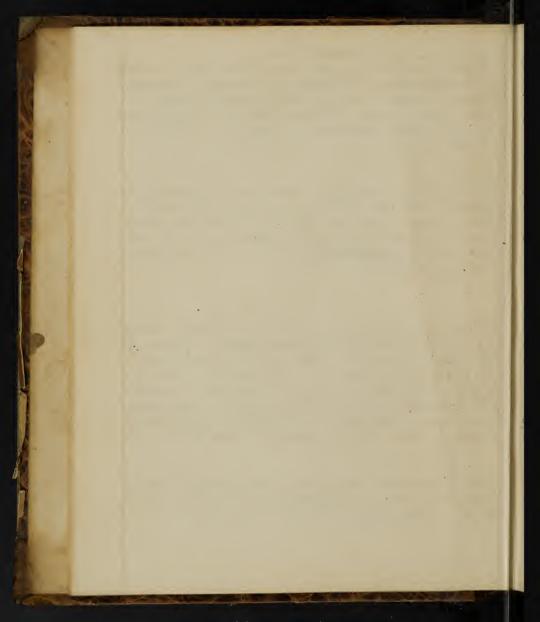
Lefect of mill exists in three cases: 1. Where there is a defect of understanding & Infants, under the age of discretion. They are deemed in law, not capable of distinguishing between right + mrong. — They are therefore, not prinishable, by any criminal formecution, in any case. 17 Cark. 1.2.

If the offence is an omission, infants are not, generally, Junishable, at C.S., tho of the age of discretion. & not re-

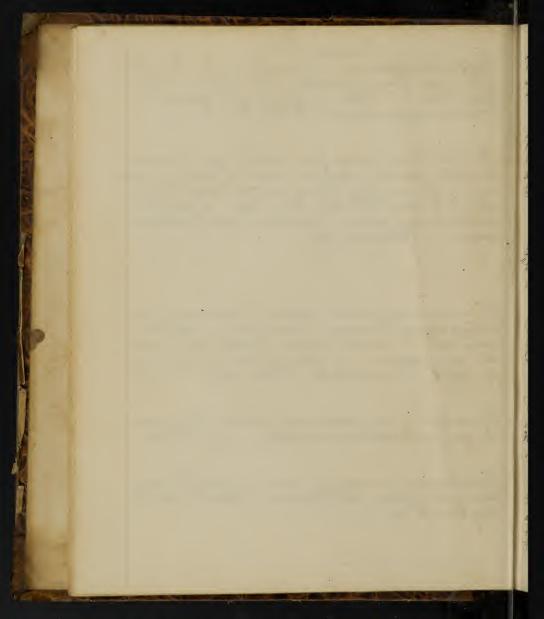
If the offence is an omission, in fants are not, generally from ishable, at C. S., the of the age of discretion. Cr. nott re-pairing roads, bridges, se. I Cale 20.22. 4 Bl. 22. Saches not importable to infants. The offence is ascribes, rather to a mant of forethought of providence, than to a positive criminal disposition.

The age of legal discretion, up the law now stands, is that of thyears under this age, the presumption is in favour of the infants innocence. But, us to all infants between 14 + 7, this presumption may in capital cases at least, be relutted. If under y it cannot, in any ease, be rebutted. This distinction, subjecting infants under 14, if doli capacis, is laid down by Mackstone, with respect to felonies only.) 1 Hoar. 2.4 18 123. 1 Hole. 27. Fost. 12. 1 Hole, 25-6.

May not an infant under 4. be punished for breach of Frace, viot, + Common musdemes nors? It feems not, according to Blackstone. 4781.22-3. Sed Qu.



Coiminal Dam. Tdiots, & Sunatics, are not punishable for their acts while under these incapacities . 4 Bl. 24. 3 Inst. 6. 1 Hale 10. 43. 05. 1 Harr. 2. Eccus, in case of a Sunatic, if he of= find in a lucido interval. 4 Bl. 25. 1 Hale. 31. A person deaf & dumb, from naturity, may be tried, and punished, for even a capital crime, if illeas can be converyed to him, by figns. Seach 108. 394, 2 Hale 317. 2 Har. 462. 4 Bl. 324. 1MEV. 138. _ When this is the case, he's supposed doli capay - capable of a quilty intention, or motive. _ Otherwise, not: If one commits a capital offence, + before arraignment becomes insane, he cannot be arraigned; - if after ar = raignment, he cannot be tried; - if after verdict agt chim, no judgment; - if after judgment, execution must be tayed. 1 Han. Q. Sonst. 45. 1 Hale 10.34.370. 4Bl. Q4.393. If doubtful, in any of these cases, whether the prisoner's non compos, the fact must be tried by a jury. 473l. 25. Hoe, who incites a madman to do an unlawful act, is sumself the offender the principal . I Ham. 3. 1 Hoale. 017. Hely. 53. 21 Bl. 35.



Voluntary intoxication is no excuse; but rather an aggravation. ICo St. 242 a. 4 18 25-6. 1 Ham 23. (800) Flow 19. a. 4 Co. 125. 1 Hale 32.

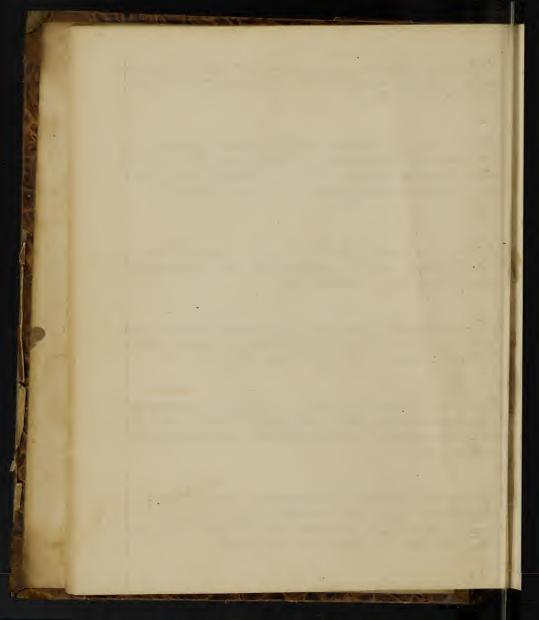
But in case of habitual delility of mira, produced by a long course of intoxication, it is otherwise I presume: It thus becomes a disease. So, if intoxication is not volume tany, but produce as by force, or france, I presume.

I There is a defect of will, when the understanding, the sufficient, is not exerted. Here the will is neutral; it does not concur with the act.

General rule that if one commits an unlawful act, by misfortune, or chance, he is excused. Here is a defect of will. 4 Pd. 26. 17 Cam. 5. 17 Cale 39. 4 Co. 124. Hely. 123.

But if one intentionally doing an unlawful act, does unintentional mischief, he is not excused 4BL 29. I Hale. 39. Her has the mensores, - & must abide the consequences of his voluntary act.

Ignorouse or mistake, in soint of fact, excuses. Hore is a defect of will Eccus, of a mistake in lan- here the will concurs with the act. Cro. C. 538. 478. 27. 39. 72.574. Flow. 343. T. Ray, 467-8. Barr. 35. 1 Hoam. 5. 110. 1 Horle 42-3.



Criminal Sam.

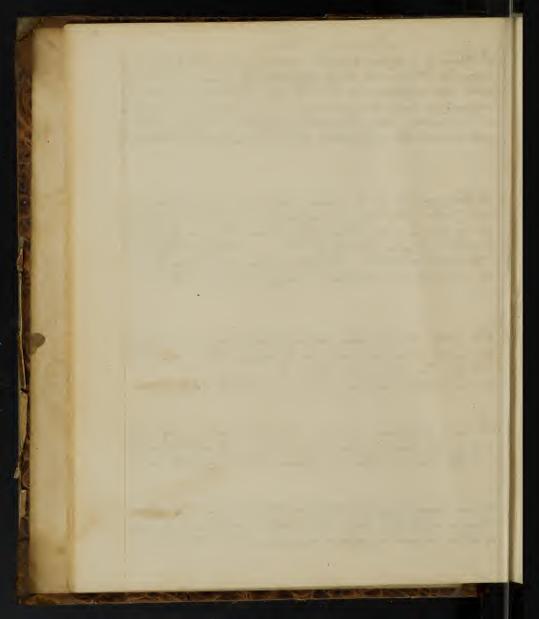
3. There is a defect of mill, arising from compulsion, or necepity. He est the will opposed the deed, or, at least, does not approve it. Ex. If the Segislature enacts an inquitous law, commanding an act contrary to religion or morably;— the Julyect is excused in obeying:— In he acts under the obligation of civil subjection 14 M. 21.278.

A feme covert is, in many instances, excused from pure ishort, when The does an inlamful act thro the coercion of her husband; or (which is the fame thing), in his company. Ex. Theft, + burglary. Lee Houst? + M. 10 Mod. 13. Hely. 31-7! I Heale 45-7. 4 M. 28. — Reason of the rule Jeems to be in the ancient law relative to benefit of clergy. 4 M. 29. n.

But if she commits these crimes voluntarily, or by the bare command of her husband, I in his absence she is not exensed. 4 Bl. 3g. 1 Bac. 294, 9 Co. 71. 1 Harr. 3. Are not theft, I lunglary, mala in Je : 4 TH. 28-9. 230-241-2.

In case of treason, murder, o, it is faid, robberg, even coercion by the husband does not excuse. 1 Hart. 2. 1 Bac. 294. 4 M. 29. 1 Hale. 47. Hely. 31. - Reason, Leinousness of the comme

So, in manslaughter (4 12 29. n. 17bale. 47. 2u. ag to rollery, 17ban 4. n) But, it feeng, she is thus excused in all cases of felony, except murder & manslaughter. 4 181.29. n.



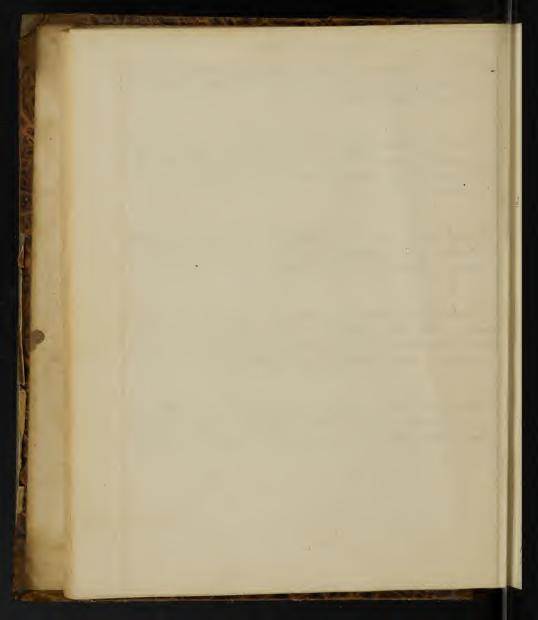
Neither a childe, nor a fervant, is, as fuel, excuses, for any crine, by the commans of parent or master 4781.28-9. 196am 3./5809 378eb 34. Moore 813. 176al 244.

Another species of compulsion, norking a defect of mill, is dure to per minas. This excuses many unlawful acts. Ex. Treasonable acts excused by compulsion of enemy or rebels, 47%. 30.17 bale. 50.17 bar. (5.8.00)

But the last excuse holds, chiefly, with regard to positive offences, only, - as treason; - not as to natural offences; - as killing an innocent man, to escape death.

Another kinds of nece bity arises from legal compulsion. The mill, in this case, is passive. Et. an officer of the law is bound to make an arrest, or dispense violens of o if respectively of the state of the state

Stealing to relieve extreme want of food or clothing, is not justified by C. L. 4 M. 31. 1 Hoale 54. Means not justified by the ends. - It would lead to dangerous evasions,



Degreef of Guitt. Of Dincipals & accepanies.

One may be a principal, in an offence, in two degrees.

A principal in the first degree, is he, who is the actor, or absolute perfectuator: - In the seconds, the who is present, + abetting, the actual perfectuation. 478.34.

According to Harrhing, the offenders, in the last case, are principally in the first degree . 2 Ham. 258. 326. 441. - Qu. 2 m. Nr. 533. 537-8. 1 Hale. 437. 4 Bins. 2075. The latter were anciently considered as acceptones only. 2 m. n. 523. 1 Hale. 437.

Dong. 197. 186ale. 815. Flor. 97.

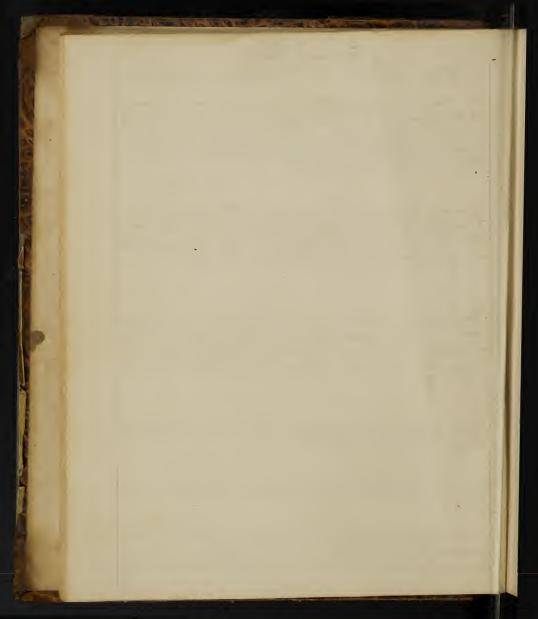
The presence, necessary to make a principal in the 2th degree, need not be an actual standing by, mithin sight, or hearing: Constructive presence is sufficient. Ex. Resping match, or quard, at a convenient distance . It IN . 34. First 350. Doug. 197.

M. h 539.

To air + a fist a person unknown, mill make a principal, in felong. Seach. 291. 2 m. n. 534.

The above rules hold as well of Stat., as of C. L., felonies. In. 125.

Even a constructive presence is not always necessary to make a forincipal in the first degree. Ex. preparing poison, of exposing it; which is taken, in the offender's absence: - a trap: a fit fall (over)



Criminal Law. Formerpaly of letting out a world beast, with intent to do mischief: Horre the offender is principal in the first degree. 4 131.34 5.

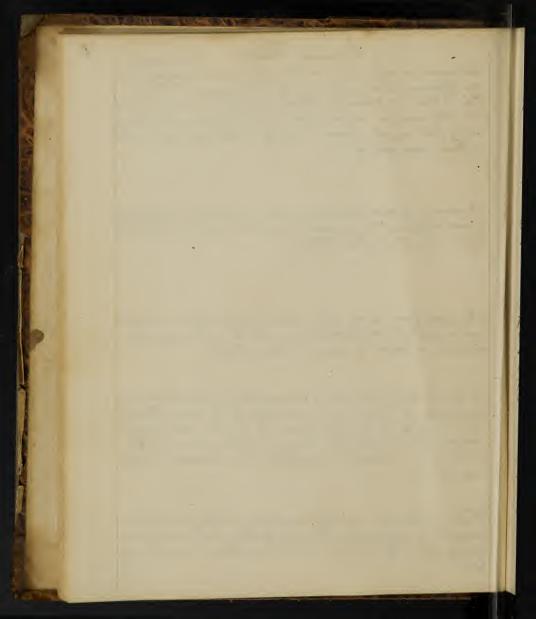
the offender is Principal in the first degree. 478.345. Hely 52 Fost 349. 3 not. 138. 1 Hade. 017. 2 Har. 315-443. 4Co. 44 9 Co. 81! - He cannot be principal in the 2. degree; for this rouls in July that another person is quilty in the first degree - which, in Juch cases, cannot be.

A special verdict, finding, only that the prisoner may present, is not sufficient to marrant a judgment agt him . 2 M. 9. 1827. 531.536. Hely 77-9.413urr. 2078.

An acceptory is one, who is not the chief actor in the offence, nor present at the perpetration; but is, in some way, con = cerned in it, before, or after, the fact. 4 781.35.

In high treason, there can be no acceptory. All concerned are forincipals, on account of the atrocate of the crime. Besides, the bare intent to commit treason, is, in fome cases, actual treason. 4/12.35. 3 Inst. 138. 17 Cale. 013. 27 Carr. 439-40. Co. L. J. 12 Co. 81-2. — Under the Constitution of U.S., treason is lenging rar ag t. U.S.

Whatever, then, will make an acceptory in Felony, makes him a principal, in high treason. (Bornerly questioned as to acceptonies after the fact) 4 171.35 176 am 54. 2 21. 439.40. 3 Frat. 318. 12 Co. 81-2. Dy. 296.

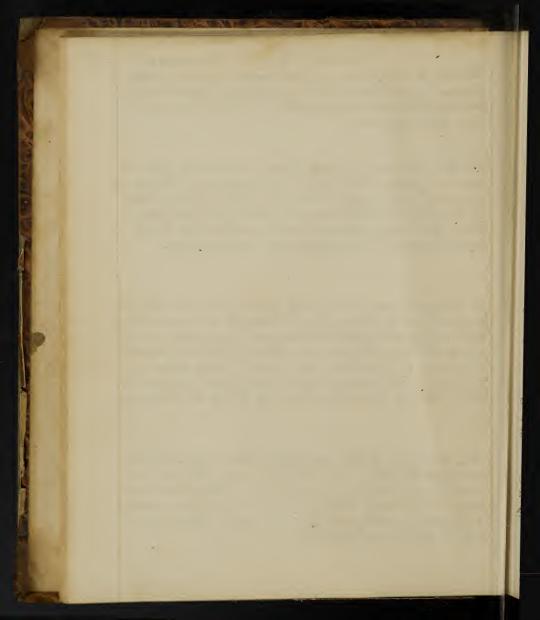


There may be acceptores in petit treason, murder, of other yelonies, except those, which, in judgment of law, are un-premeditated; - as manslaughter: - in Juch, there can be none before the fact.

On the other hand, in petit larceny, I all crimes under the degree of felony, there can be no acceptonies. All concerns are quitty as principals. 471.35.191.176ale. 513.615-15.176am. 115.132. 29.91.441. Co. L. 39. mo. 066. 18id. 312. Cro. E. 750. 12.Co. 81. For in Juch minor offences, minute differences, in the degrees of quitt, do not require legal discrimination.

An acceptory cannot be quity of a higher crime than his principal . Et. A Gervant caused a stranger to murder his magter, or a wife, her husband: The servant, being absent, is accesssory to the crime of murder only. But if he has been present, + africating, he would have been quilty of petit treason, as principal - + the stranger, also as principal, of murder only. 4781.35.8 Ins. 139. 176am. 132. 2 Jb. 445. Dy. 128.332. Mo. 91.176ale 575.

Acce pones are of two descriptions: First, before the fact; second after the fact. - An acceptony before the fact is one, who procures, counsely, or commands, another to commit a felony; being himself absent, at the time of the act: - Absence is necessary - otherwise, he is principal. 176 ale. 015-15.
471. 30. 256 am. 445. Blow 475.



Criminal Lam. Acceptonies.

HE, who abots another to an unlamful act, is guilty of, (or, accepton, to), all that ensures upon that act; but not to am thing substantially distinct from it, + not directly ensuing upon it. Ex. a. Commands B. to beat C. - B. beats him till he dies.

a. is quilty of the murder, as acceptony. Go, a. commands B. to poison C. - B. shoots, or stay; him; a. is acceptony. Hilling C. is the substance of the crime abetted - the manher is but circumstance. But if a. Commands B. to burn C's house, + B. in doing it, roly the house, a. is not acceptony to the rolberg.

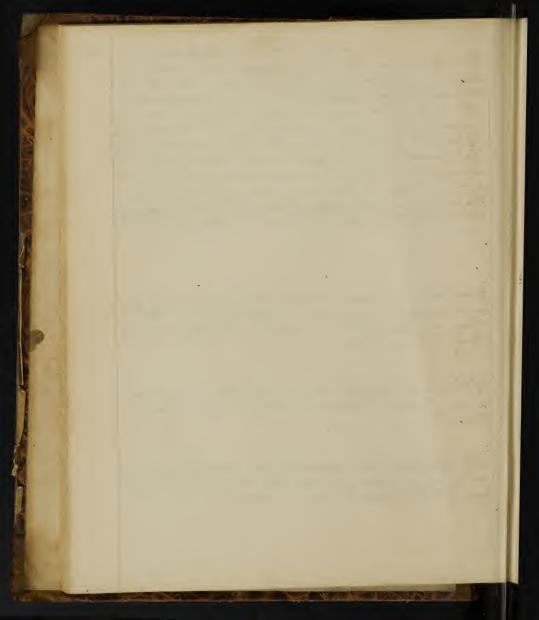
The act done, is substantially different from that commands.

478.37.2 M. N. 37. 18 Cale. 614. 2 Hoam. 446-7. Flore. 475. Flore. 370-1.

To solicit one to commit a felony, or, it feems, any other offence, is a misdemesnor, if the crime be not committed. 2 East 5. 5 Mod 101. 2 Shore. 1. L. R. 1377. 3 East. 581. — Dindency dangerous—therefore punishable.

If the abettor retracts, before the act done, he is not ac = cessory, it seems. 2 Ham 445. (800) 9 cms. 51. 17 Cale. 537. Frost 354. Flow. 475-5.

Stat. felonies, as well as those ut C. S., admit of acceptories, the stat. is silent, as to them. The former having the inci-dents of C. S. felonies. Seach. 04. 176arr. 104.



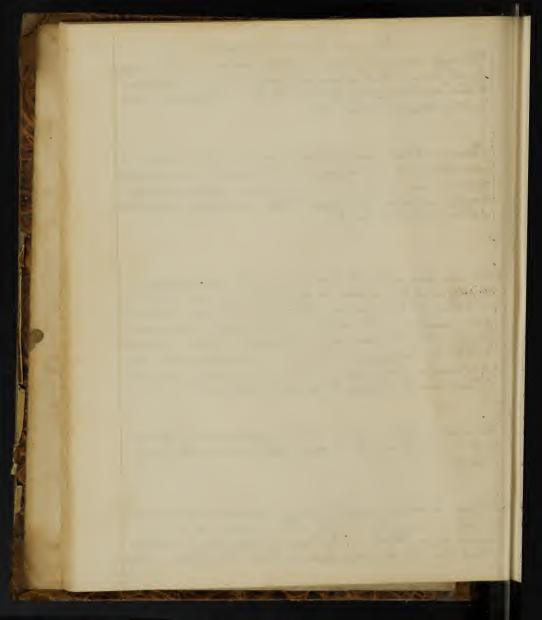
The bare concealing of an intended felony, is only a misprission of felony; which is punished only with fine + imprisonnt. I than 447. mo 8. 3 Ing. 142. 4 186. 181. 181. 181. 181. 19. 3 Instant. 35. 1 Hat.

Gersong, who are accidentally foresent, when a felony is committed, I do not endeavour to forevent it, I to apprehend the felon, are quilty of a misdemessnor-fined & imporisoned. Exception in favour of infants—to them no lackes is imported. I Hear. 115-5. 442. noy. 50.

4 An acceptory after the fact, is one, who receives, relieves, comforts, or a pito, a felon, knowing him to be such 4M. 37. Hely. 43. 2 Ham. 1848. 204-5. 448 se. 17 Hall. 018-20. But the apastance given, must be with intention to hinder public justice: As to prevent the felon from being apprehended, tried, or junished. 4 Bb. 38. Ex. Harbouring occoncealing - furnishing with a horse se to escape - resculing - afsisting in an escape from gad, by instruments - briting the garder, of Hely. 45. 77.

To relieve a felon, in gad, with necessaries, is no offence. 471. 38. So, of any of the com. offices of mere humanity, thanity.

Buying, or receiving, stolen goods, knowing them to be such, made no acceptory, at C. L. - The offence was a mere misdemesnor. Geens, in Eng. nom. by Statt 5 ann. + 4 Gco. I. 176ale. 620. 4731. 38. 2 Heart \$150. Cro. 6.888. All. 57. Gel. 2.5: 1 Roll. 65.



16.

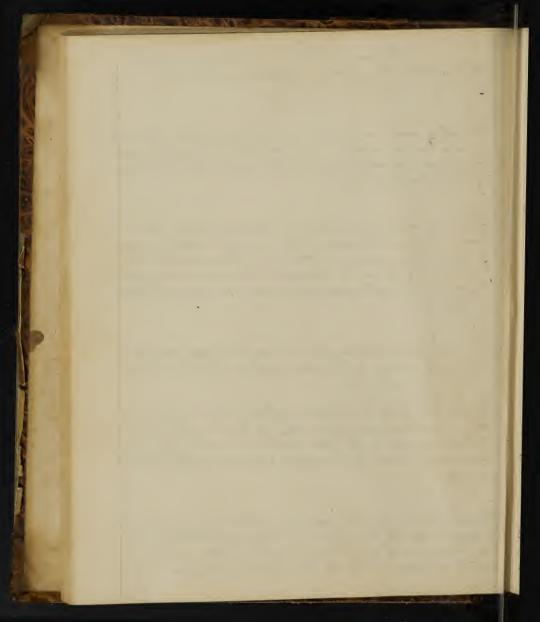
The felony must be complete, at the time of the afsistance, to make one an acceptory after the fact. Ex. Case of a more tal rounds afsistance given before death 4731.38.276am. 487. (800) 1 Hale 219. 622.

It rife is excused for a faisting her husband, (utdup) this a felon - presumed coercion. But no other relation excuses. as Farent, Child, master. of (478l. 98-9. 2 Ham. 45, 184. 4. 17bale. 121. I Inst. 108.) I even the husband is not excused in a pristing his rife, a felor, the reason of the exense not existing; - all Hust. th. p. 18. g. z.

If one is indicted as acceptory to two principals, proof that he was acceptory to one is sufficient 9 Co. 119 a. 2 Mer 540. 542.

General rule of the C. I. that acce pories suffer the Jame June eshment, as principals [4731.39.39 188]. But acceptoring after the fact, are now, by Eng. Hats. allowed the benefit of clergy, in most cases - where the principal, + accepones before the fact, are not.

Formerly holder that an acceptory could not be compelled to answer, till the principal may attainted (4136 323) Cont now holden; but he cannot, now, except by flat, be tried, (unless he deserveit), till the principal is attainted or,



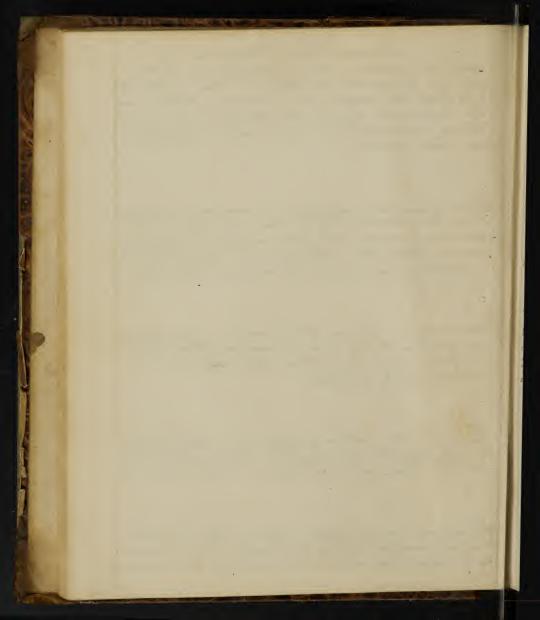
Criminal Law. Acceptones of:
unless the principal is tried at the same time. 2 Har.
453.457-6. 4731. 40.323-4. via bleach. 18. - But by Statt ! Ann.,
4 &2 Geo: III., the acceptony may be tried, in certain cases,
tho the principal has not been attainted, or even tried, [4
721.323-4. 2 Har. 453. Cleach. 107] i.e. as for a misdemesnor
only. Leach. 107. 353.

If the Jonnei pal is acquitted, the accepany is discharged 2 Ham. 452. 17 Cale. 523-4. 400. 43. And if the attainder of the principal is reversed, that of the accepany is, is so facto reverseds. I Ham. 452-3. 1 Roll. 177. 9 Co. 119. — Group, while the first attainder is unreversed, the erroneous. I Ham. 452.

But the death, or pardon, of the principal, after attainder, does not, even at C. S., avail the acceptory & Ham. 452. Crs. E. 541. 46.434. Ray. 477. Dy 120. Dor neither event proves the attainder unjust, or illegal.

But at C.S. the death so of the principal, before attainder, the after conviction, discharges the acce from 12 Hour. 2153-4. 4731. 323). Secus, now by Yest. I am. ante. 2 Hopen. 453 Seach. 10%.

If one is acquitted, as acceptory, before, or after, the fact; he may afterwards be indicted as principal. But if acquitter as principal, aut. whether he can afterwards be indicted as

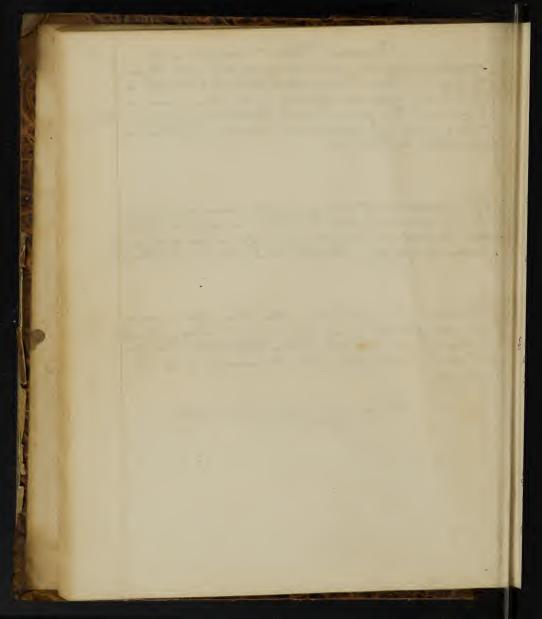


Criminal Sam. Accepanies of. 18 accepany before the fact; the as accepany after the fact, he may be. 4/31.40.176ale.625-6. Fost 351, 2 & Car. 529-30. Is there amy sufficient objection to the same course, in first case? For proof that the prisoner is quilty as ac- N.B. cepony, will not support an indictment lagt thim, as principal. 2 MeN. 495.

The indictment agt one, as acceptory, need not state that the principal committed the offence - Sufficient to state that the principal was convicted of it; & then to change the prisoner as acceptory. 70. 12. 405. 17 Cale. 525. 2 M. 12. 454. Fost. 365.

Tet the acceptory, on his trial, the it be after the conviction of the Frincipal, may controver the latters quilt, either in point of fact, or of late. (2 Har. 450.4 Bl 324. Fost. 12). 305. 2 M. N. 404-8.9 Co. 118) For the conviction is reg interalist acta.

So he may orher both are trick together.



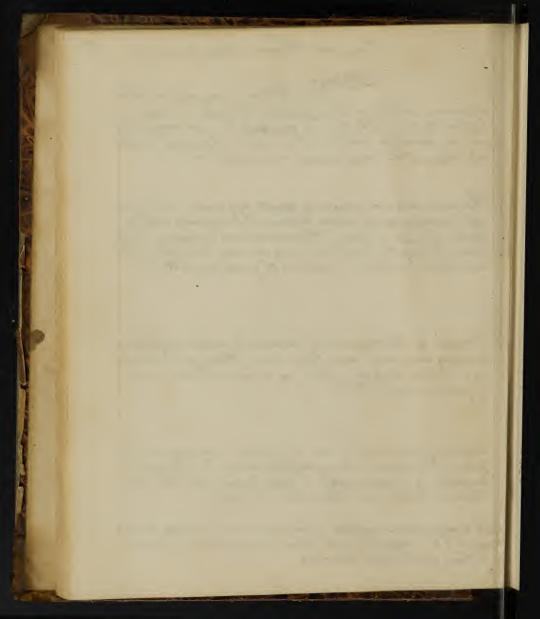
Felony of Elony is any offence, which occasions, at C. L. a total forfeiture of good, or lands, or both (4 131.94-5) The term is generical; i.e. not designating any one specific violation of law, but a whole clap of offen: ces- Secus, of the terms, murder, manslaughter of.

The word did not, originally, denote any crime, but the penal consequences of certain crimes. Synonymous with for= feiture of a fee, or feed. Afterwards used to signify the of-fence, working the forfeiture - o, by an easy transition, to de-note offences, working a forfeiture of goods only. 4 134. 95-7.

5. Treason is strictly a felony, because its works a forfeiture. anciently comprised under that name. 17 Carr. gg. 3 Ins. 15.47K. 94-5. Worr, classed by itself, as a crime standing alone, by general usage. 4131. 198.

Capital punishment is not necessarily a consequence of felony - (tho' almost always superadded). Ex. Selfmurder, homicide by chance medly + petit larceny . ride 478. 237. 1 Ham 140. 2 Bac. 476. 1 Eller. 208. 2 Wilg. 19.

To, i contra, some capital offences are not felonies: Ex. Hero esy at C. I. - Standing mute, when a rraigned on indictment. 11 Harr. 99. 4 134. 95-7. I Inst. 43.



Criminal Larr. Felong. 21.

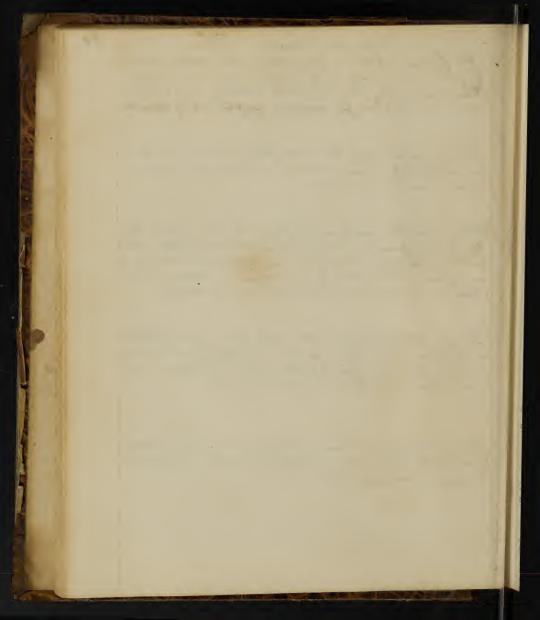
All felonies, which are punishable with death, work a forfeiture of all lands in fee fimple, & of goods & chattels. When, (not so punishes), of goods & chattels only (4734.97. 381-3. Co. S. 591) For a fee cannot be forfited but by attainder.

But, by general usage, the mords, felony is non made to imfort a capital crime, & indeed, to include all capital crimes, below treason. 4731.98.

Hence, if a flat creates a new felong, the law imposes that it shall be punished with death, as well as forfeiture. So, i contra, if the flat expressly annexes capital punishment to any offence, that offence is in consequence, a felong. 478.98. 176 ar. 108. 176 ale. 627. 541. 703. Co. L. 391. 2 Bac. 459. 76 of 1293.

But if a stat prohibit an act, under frain of the perpetrators forfeiting all he has; it is only a misdenessnor 4 Bac 044. Co. L. 391. Hoob. 270. 1 Ham. 107 (folio 108 1800): No offence being made felony by doubtful, of ambiguous, words.

Crines, which, in Eng?, cause forfeiture, are, in Cont., Callede felonies; this no forfeiture enaues here, except in one case, I believe; vis. manslaughter,



ony.

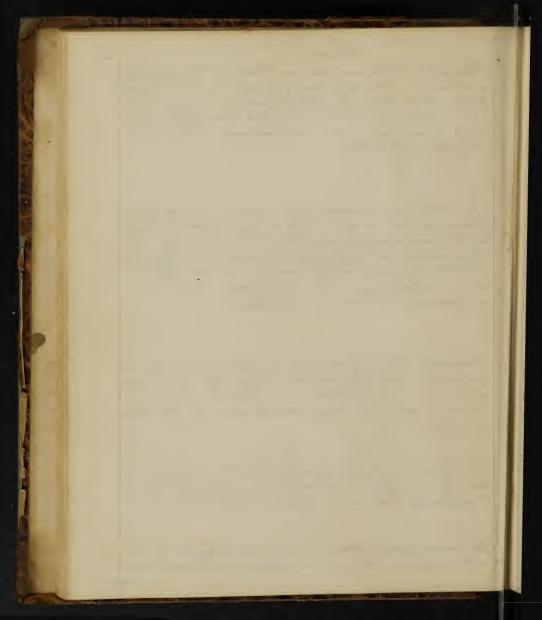
Clergyable felonies, are those, in which the Benefit of Clergy is allowed. — This is a kind of pardon, in effect, exempting felons, this convioled, from the punishment of death. 41360 933.373. 2 Harra 36.16 16.10 213. — But their goods are forfeited by conviction, t are not restoreds. 4736.378.387. Its origin, 474.365, de.

At C.S. it may allowed in petil treason, I in most capital felonies; but not in all: Not in high treason, petit larceory, or mere misdemesnors. 4781.365.374.2 Ham. 479. Its
allowance, in most capital felonies, sanctioned by etat. 25.8d.
III. (4731.374) I extended to petit breason (2 Ham. 479). Still not
allowed in high treason, - nor in petit larceny - nor for mere
misdemesnors - last two cases, not capital.

Originally allowed only to Clerks in orders, or the Clergy-afterwards, to every man, who could read; this being evidence of his being a clerk (2 Ham. 474 5. 2 Hale 372. 4136. 385-7); but not to momen; they being excluded by sex, from the clerical office 4181.389:

Now, by divers Engl. Itale. especially Jac. I. 3. 4. 4+5 M. H. +5. Ann.), the privilege is extended (in ease of clergyable offences), to all persons whatever - readers, or not. 4 131. 367. 370.

But common persons, taking the benefit of clergy, are by yest. 4 H. VII. burnt in the hand, or whipped, or imprisoned, or fired, (over



or suffer some other inferior punishment. IMEN. 214-10.219. 4181.373. But Clerks, Fres, & Frerefes, are not burnt of, 4781.373-4. IMEN. 217. Fost. 350. by Jeat. 1 Ed. VI.

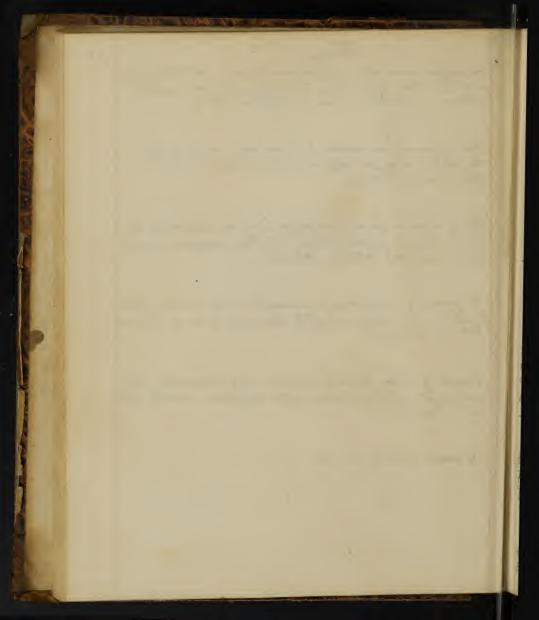
And lay persons are entitled to it, but once - clerks, as often as they commit clergyable offences. 4786.373. 2 Woode. 375. 1 CN. S. 14. - State 4 Worn. VII. + 1 Edr. VI.

By its allowance for any particular felong, the offender is discharged forever, not only of that, but of all clergyable felonies, before committees. 4786.374. 1 M. N. 217.

At present, in Eng? clergy is allowable in all felonies, whether by state or C. L., unless expressly taken away by act of Farliament. 4731.373.276ale. 335.

Benefit of clergy formerly pleaded, in Erg? (declinatory plea); nor prayed before judgment, after conviction, usually 4 Pd. 332.2 Had. 235.

No benefit of clergy, in Cont.



Homicide is the killing of any human creature. 474.177.8 Bac.

Of homicide there are three kinds; - justifiable, excusable, + felonious. 4786.177. 176am. 104.11, 115.

Homicide, therefore, is not necessarily criminal. The first kind has no guilt - the Jecons, very little, even in judgment of law; + only a nominal punishment. 4786. 177.188. Frost. 283. 2 Hoars. \$ 39.1 196.108-9.

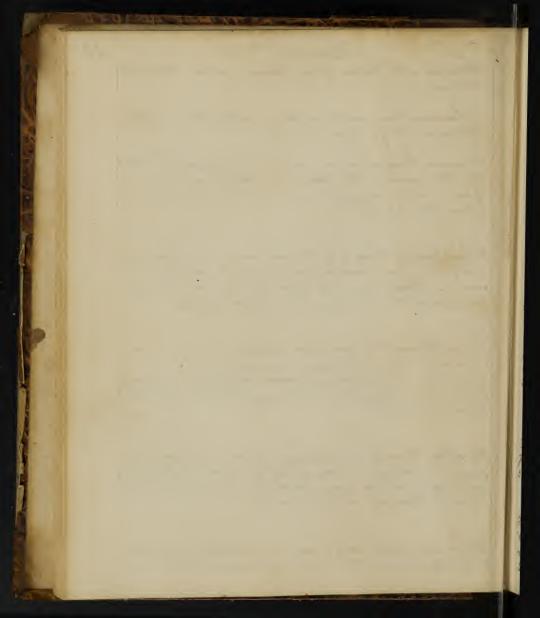
I Sustifiable. This is of several kinds. _ 1. Homicide is justifiable, when occasioned by necessity. Cr. Sheriff, in the execution of this duties of his office, executes a condemned malifactor. 4 Ph. 178. 176 am. 105. _ Legal recessity.

But, in this case, the law must require the act to be done, to it must be done by the person, required, by law, to do it; or this deputy. For if a private person, voluntarily, + wantonly kills a person attainted of it is murder. 474.178.176al.497.801. 3 Bac. 194.176ari 100.

The officer himself, in executing a fentence of death, must pursue the fentence - Secus, quilty of murder. Cr. Beheading for hanging, or vice versa, of 47th. 179. 3 Bac. 674. 2 Mer. 559.

Fireh. 31. 1 Han. 100. Co. L. 128. 176al. 531.

The sentence must be by a court of competent jurisdiction. Ex. of C.B., in Eng., or C.C. in Cont, give sentence of death on a



Pustifiable Homicide.

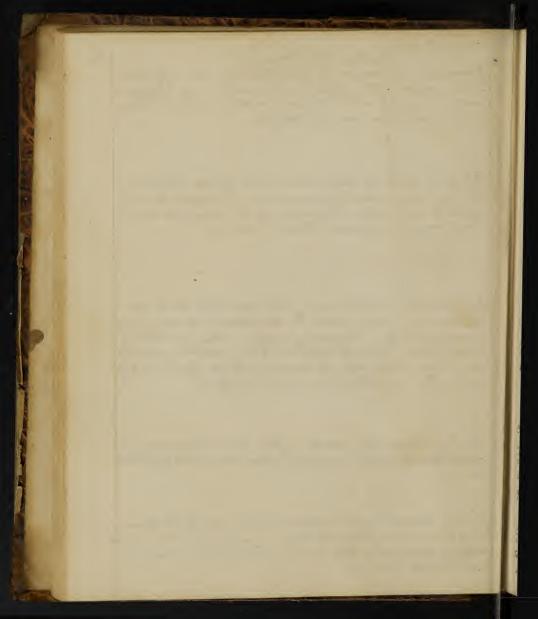
prosecution for a crime, of which they have not cognisance; to it executed: The officers, who execute it, the Judge, are quilty of murder. 4 TM. 178. 3 Bac. 674. 10 Co. 76. 6. 5 Co. 105. 1 Ham. 105. 130. 1 Hold. 497. 500. mo. 333. Cro. C. 98.

But if the court has cognizance of the offence, a pass sens tence of death, when the offence does not subject to it; the officer is not quilty - bound to obey the order of the lam. It is not coram non judice. I Ham. 106. 3 Bac. 674.

2. Justifable, in certain cases, when committed for the advancement of public justice. Ex. An officer, in making arrests, is resisted, & kills: - dispersing violens: - + this last holds of private persons. 176ar. 109 Help. 75. [Here justified by permission of lar, rather than the command of TH. 179. Host. 58. 2 Mest. 579. 570. 17bal. 494. 17bam. 106-7. 3 Bac. 574. 900. 58.

So, of an actual felon resists, or flies from, his pursuen, even private persons without varrant. 176am. 186. 2 ch. V. 559, se. Flost. 271.

So, if an innocent person, indicted of felony, resists the officer, having a marrant 176 am 105. Greens, if a private person mithout authority, attempt to arrest an innocent person, on suspicion. 2.M. 1. 5/2. Fost 318.



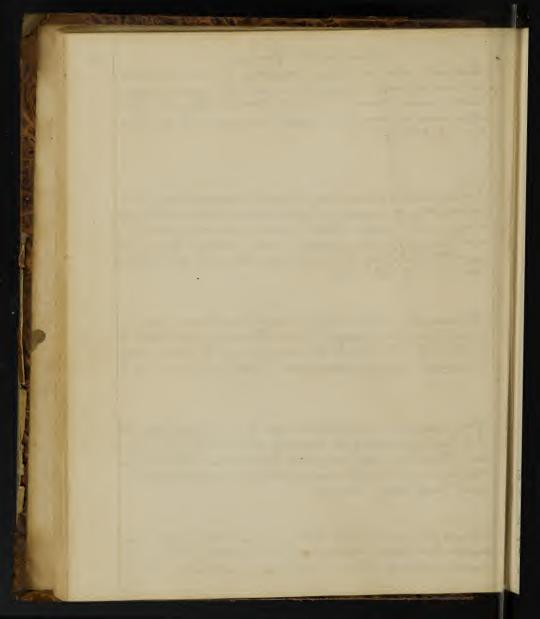
Instifiable, when an officer, attempting to make a lawful are rest, in a civil case, is resisted, so that deft cannot be appreshed aline. 17 Can. 107. 17 Roll 189. Float 270. 3 Ing. 37. - 60, in other cases, to prevent an escape, or rescue. Str. 499. Float. 293-4. 2 M. S. N. S. S. S.

3. Sustifiable, to prevent any forcible + atrocious crime: Ex. One attempting to murder, or rob, another, is killed. So, breaking a house, in the night. Secus of crimes not accombanied with force: as, Dicking Tookets, mere breaking house, in the day. 471. 180-1. 3 Bac. 675. 1 Ham. 108-9. 176al. 488-5. 493-4. Thely. 137. Float. 271-5. 2 Med. 582.

Not justifiable, when merely to defend one's house, goods, or person, from a bare trespap. 4711.180-1. Fost. 273. Crs. 6.538. 176an 108. 109. 176al. 485-6-8: Tho, if the trespap is agt his person, it may be excusable, se defendendo (post). 176an. 108. 113-4. 478. 184-5.

If the trespass is agt property only, it is mandlaughter. (60, if he kill one, breaking his mindows, to arrest him in a civil case. 176 am. 108. _ May it not be homicide se defendends, in the last case, i.e. if he cannot otherwise escape death, or great bodily harm? 4781. 183.)

General Frinciple is this: When a crime, itself capital, is at = tempted mith force; the force may be lanfully republed, by the death of the parts. Here the homicide is justifiable. 4 181.181.



Instifiable Homicide

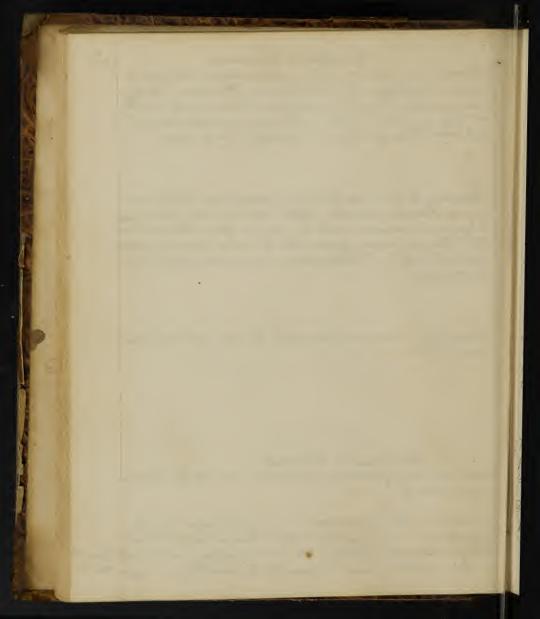
A roman may larfully kell one, who attempts, with force, to violate her chastity. 4 PH. 481. 17 Carr. 108-10. Fost. 274. — So, hus-band, or parent, Anay dill a ravisher. 17 Car. 108. 471. 481. 17 Cal. 481. 1821. — To may any other person, I suppose. 17 Carr. 109. 3 Ing. 198. — analogy to ca. of violers.

According to the old opinions, justification of homicide may be specially pleaded. Stater opinions are, that it must be given in evidence, under the general ifere. 176am. 105. 3 Bac. 675. 6. 176al. 478. (always agreed, that an excuse cannot be pleaded 176am. 105. (76. fol.) _ Special plea in bar would amount to the general fore.

Firstifiable homicide not punished at all - not even nomis nally. 474.182.

II. Excusable Homicide. Difference between justifiable & excusable; one langul, the other venial. 471.182.

Of 2 kinds. 1. For infortunium - by misadventure. 2. 65. defendendo - in self defence. 474. 181. 1 Hoan. 111. 1 Hoad. 38. 41. 293. 492. The first purely involuntary - the second, voluntary, but commits 3 Bac. 678. led form motives, + under circumstances, constituting an excuse 1 Hol. 671.



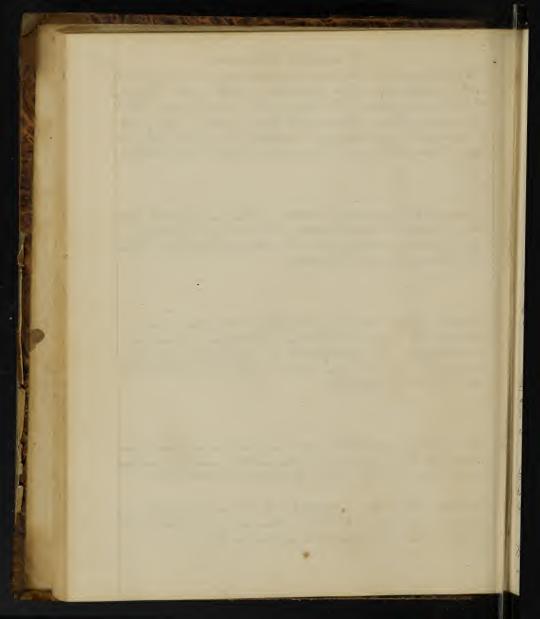
! By misadventure: Heappens, where one, doing a langul act, without any design to do hurt, involuntarily kills another. Langulness of the act, is espendial. Ex. Using an are - lead flees off. To, a third person white a horse, which kills another - rider quilty of homicide by misadventure: whiteper of manslaughter, but least. 1 Ham. 111. 176al. 472. Fost. 2889. 4781 1823. 3 Bas. 476. Hely 40-1.

A Farent, in rensonably correcting a child, accidentally kills him - master - school master I of It is by misadronture. 4181. 182. 176 ar. 111. Hely. 64-5. 133-4. Fost. 262. 5 Mod. 287. Skin. 688, 176 dt. 454. 478. 4. 3. 4. 2. M. N. 556-7.

So, of an officer, corporally punishing a convicted criminalexcusable. If chowever, the beating is outrageous, it will be manslaughter, at least: If with an instrument apparently endangering life, murder. 186 arr. 111. Hely 64-5. 193. Flost. 262. 176al. 454. 474. 2MEN. 356-7.

But if death accidentally ensue, in consequence of an unlaws ful act, which is maken in se; the author is quilty of manslaughter, at least in fome cases, of murder 2MeVr. 333-4.

Distriction: If the act is trespos only, it is manslaughter; if Yelong, it is murder. 3 Bac. 576-7. 176am 112-13. 126-7. 76ob. 134. 478. 183. 192 3. 176al. 472-5. Fost. 258. 292. Str. 499. Hely. 117.



If one accidentally kills another, in the execution of a malicious of deliterate purpose to do him personal hurt; it is murden Hely. 117.1 Hoan. 112.4781 200.176al. 39.478.

So, if it be in consequence of any unlarful act, which naturally tended to bloodshed. 4781.193. Hely 118-14. 176am. 112.

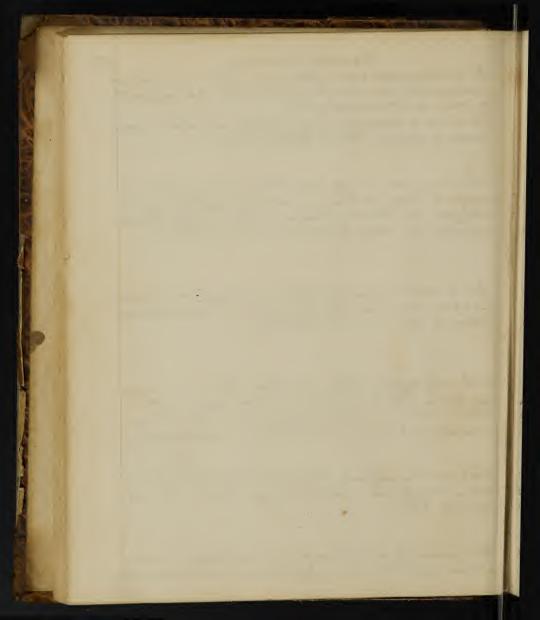
Go, if one does an idle act, which must, manifestly, en = danger the person of some one, + accidentally kills; it is man-slaughter: Ex. Throwing slones at another in sport: This is an unlawful act. 1 Har. 112. 131. Vir. 48: Fost. 201. 471. 183.

But if death accidentally happen, in consequence of amy laws ful sport, as foot-ball, trrestling, if it is by misadventure, only. 176am. 112. Fost. 250. 2 M. N. 254. 554.

2. In self defence: This takes place where one in a sudden affra, kills his a pailant, in his own defence 4 791. 183-4. 3 Bac. 577. Bhis is excusable. (Distinct from that, which is committed to prevent the perbetration of a capital crime.)

Said not to be material, who gives the first blom, if he, who kills in self defence, is forced to fight 3 Bac. 677. - Du. Not lam sent. 3.29.

But to excuse this kind of homicide (when voluntary), it must appear to have been the only profitle, (or, at least, probable), means (iver)



of preserving ones own life (4181.184-5.3 Bac. 677 186am. 108-10. Hely. 128. 2 M V 13 53. Fost. 273): or, at least, of excaping great bodily harm. 186am. 108. 113. 474. 185.

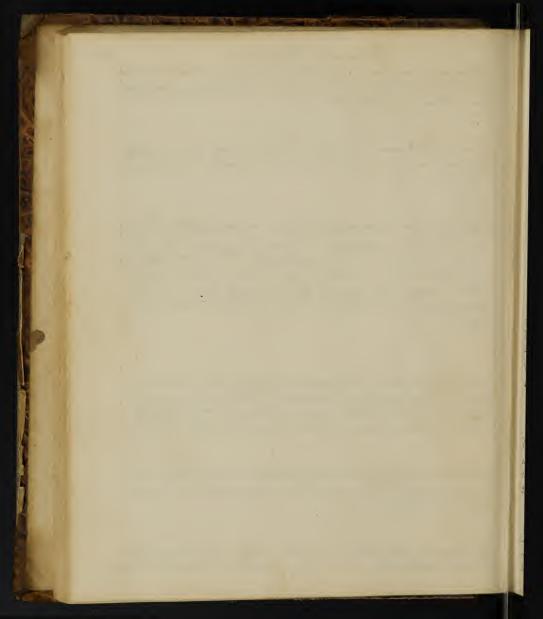
When it is to preserve ones life, it seems nearly whin to justificable homicide, committed to prevent a forcible o atrocious crime. -+ 181. 183-4.

Difficult, often, to distinguish from manslaughter: General rule: If both are fighting, (i.e. striving for victory, when the mortal blow is given; it is manslaughter: But if the slayer has not begun to fight, or having begun, tries to decline, or cannot methout danger to his life, or, of great bookly harm; it is yes defendends. 4 Ph. 184. Elast. 277. 3 Bac. 577. 176al. 481. 3 Just. 35. vid. Rely. 37.

According to fome, the aggre for himself, when forefred wt. sup + trying to escape is excusable in killing to save his own life (3 Bac. 877) now holden contra, it seems, for it is his fault. 176an. 113. 176al. 479-80-2. Hely 58.61. Fost. 276-8.295. 471. 113-6.

And if one strikes, with matice brekense & having fled, & tried to decline, kills the other, even to save his own life; it is murden 176am 113.123 Hely. 37. 128-9.

If two agree, beforehand, to fight a duel, I one being brefeed, but sup; kills the other, he is not evensed: It is murder; for there



Excusable Homicide. 176.18.176al.445.

479. 1 Har. 112.122-3-4.

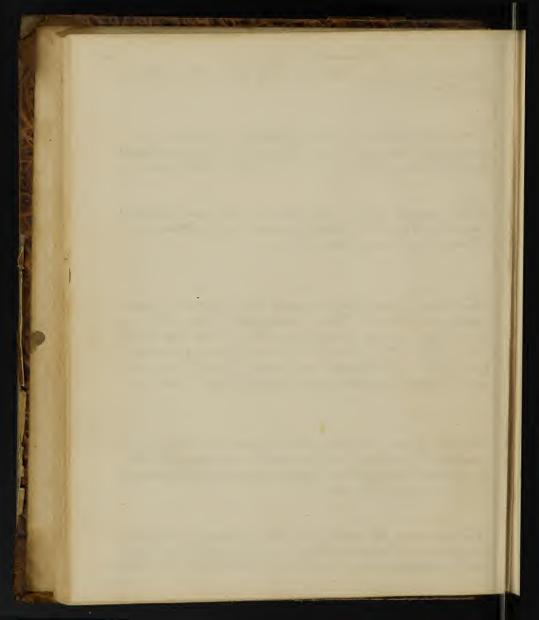
Tame rule applies to cases of fighting, in general, by a preconcerted agreement; i. e. where it is not all one continues act of Fra pron. 1. 76 ar. 125-6. 112.122. Hely. 117. 176 al. 39. 475.

To, the secondy of him, who kills in a duel, are murderers; + according to some, the other's seconds. 4781.199. 176am. 124. 1 Freem. \$74. 1 Hoal. 443. 3 Bac. 565-6.

This excuse of self defence extends to the chief civil & natural relations. Ex. Hust. in. Rely 137. Parent + chila, Mester , gerre, _ The act of the relation is construed the act of the party attacked 4 Bd. 186. 1 Hal. 484-8. 9 Bac. 508. 675.) as to prevent great bodily harm pub. _ a Stranger may justify homicide, only to pre= vent a forcible capital crime. secus not. Hely O. 176am. 125.

Hilling an officer, who attempts to arrest the slayer, in the execution of his office; not excusable _ murder. (&o, tho the marrant is irregular, I illegal, if good upon the face of it. 2 Mer. 488-9.507. 7 5.72 433.

None can excuse the killing of another, by pleading misadventure, or self defence. It must appear in evidence, under the gen. Some. 3 Bac. 676. 1 Hale 478. 1 Harr. 105. 115. 9. Jr. B. 245. Co. & 283. (Lee 3.20. that



Exendable Homicide. Luch a plea would be ill, as amounting to the general ifene.

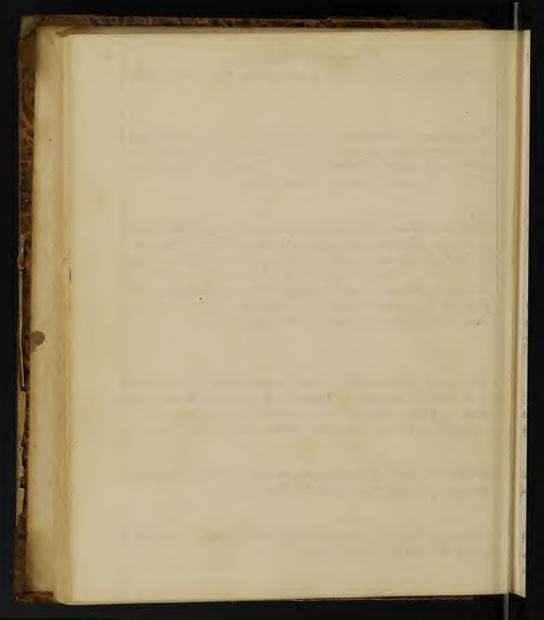
Punishment: Excusable homicide, whether by misabrenture or se defendends, is said by Coke, to have been anciently trunished with death. I Inst 148.815. Denied by later writers. 478.188.176al.425.176am.114. Host. & 62. re.

The Junishment Jeems to have consisted, anciently, of a total, or fractial, for failure of goods + a hattely. 471. 188. 186 ar. 115. Of total, the offence would be felony which Blackstone ways it is. 4781.95-7. 186 ar. 114. 2 Sh. 144). It seems to be, strictly, by the ancient law, at least), a felony; but is not classed with felonious homicide because not capital. Felong being now used as synonymous with catolal crime. 4781.98.

But as far back, as Engli records reach the party has ever been, as the still is, entitled, of course, of right, to pardon, o restitution of goods: To that the punishment is, at morse, but nominal. ITH. 188 Fost . 288. 176am. 115. 2 It. 588-0. Hely. 58.

Indeed the Eng! mages usually direct, or permit, a general verdiet of acquittal. 4781.188! Flost. 288.

No acceparies, in creusable homicide, because not feloni=



1. Homicide by kelling one's self, is called selfmurder the party, felo de 22. 24 981. 189. 176 am. 102.

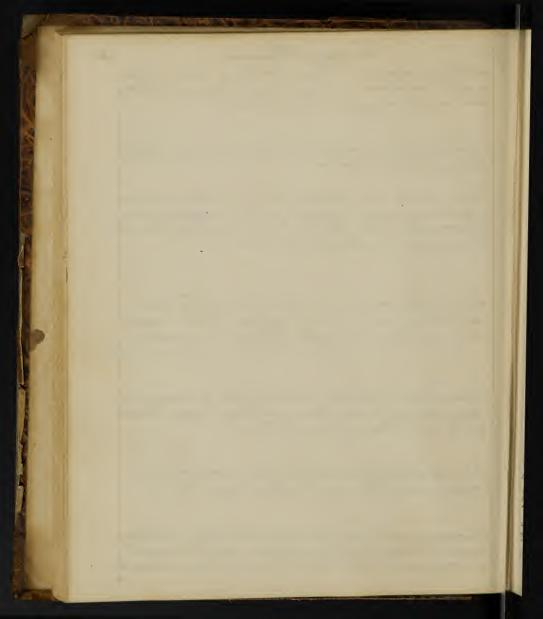
Felo de fé is one, who deliberately puts an end to his own existence; or commits any inharful malicious act the consequence of which is his own death. Ind. + 18 bale. 413. En. One allempting to kill another, the gun bursts, + kills himself. Bid. + 3 I not 54.

If one requests another to kill him, I t is done; the former is not felo de 24; but the latter is a murderer. A point, or request, utterly road. 186am. 123. Mo. 734. Du Whether correct, on principle?

A horson, to be a felo de se, must be of years of discretion, and compass mention as in other felonies: not infants under I lunates, H. 478. 189- 10. 186al. 412. 186am. 102. 3 Anst. 34.

It admits of acce bories before the fact, not after & one persuades another to this crime, guilty of murder. It 131. 189.

The consequences, it & L., are ignominious burial in the highwayfimbrales - forfeiture of all goods + chattels - secus of his large, for no attainder of 181 190.387. I Ham. 103. Finch 218. 1 Had 413. Long 324.



Florr. 243.259. 262. 323. Ray. 7. These indignities have, in most cases, been educed - nor abrogated by Eng! Fat. (1823.) In Cont. no Gueh consequences, I suppose.

2. The Jecond kinds of felonious homicide consists in killing an ather person, without justification or excuse; + is either with, or without, malice. 1 Hear. 115. Fost. Ch. 5. 474.190.

Hence two kings: (Nanslaughter, & murder; the one, with malice - the other without. 176 am. 115. 471. 190. 176 al. 400. - Malice is any unlawful, or wicked, motive . 471. 198. g. an "evil design", Fost. 256.

First of mansloughter: It is the unburful killing of another, methout makes, express or implied, Heal. 400.474. (91) & is either woluntary, or involuntary.

No acceptories before the fact - unbremeditated 4 TM. 191. 1 Ham. 15.

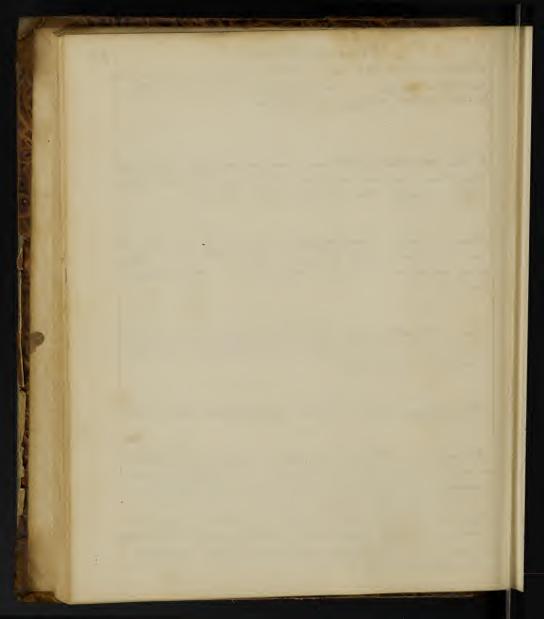
As to voluntary: If two bersons, upon a sudden gnarrel, fight, or one kills the other, it is manslaughter— (Eo, if they immediately go aside, + fight) — for it is one continued act of Trassion.

471.191. Fost 297. Kely, 115.134-5. Seach, 157-5. 2 M e. r. 303-8.

Deferent from the case of duelling by previous agreement.—
There is a deliberate intent to kill — forevery malice, o formurder.

(So, sent in case of preconcerted agreements to fight, generally)

1 Ham. 112. 122-4. Tely, 50. 131.



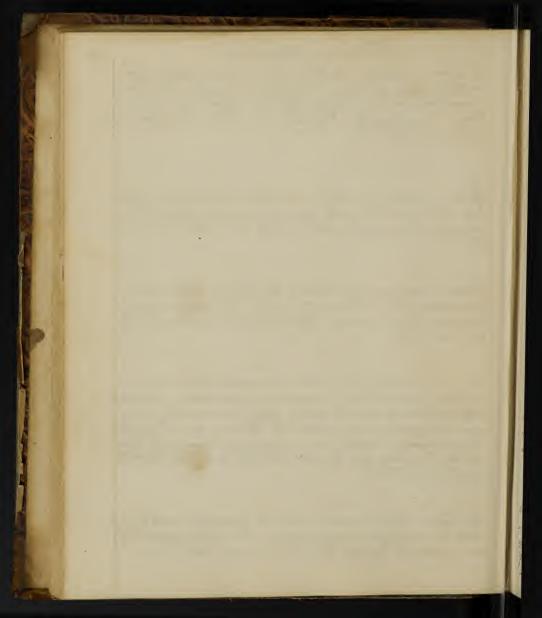
If a Gerson attempting to part others, who are fighting upon a sudden affron, is killed; the offence is murder-provided the slayer knew, or had notice, that the object was to part them. Slayer, mansimighter. Hely 00-7: 114-5-18 Carr. 127-8. Fost 310. 372. 9Co. 61. 6. 81. 2 ch . 7. 307.

If one is greatly provoked by another's misconduct, as pulling this nose, or other great indignity, + immediately killy him. manslaughter unerally. 4781.191. They . 1356.176ar. 177. n. 125.176al. 470.

Secus, if Sufficient time clapses for Japeon to subside; to the murder \$781.191. Fost 294-5-6.316. — Es, in every case of homicide upon provocation. Hely 37.56. 20 NEY. 567, 17621. 480. Ray. 212. 1 Yent . 158.

To, if on a sudden provocation, one executes his revenge im = mediately, but in such a manner as manifests a deliberate intent to kill, or do other great bottely, harm, + death ensues, even accidentally, it is murder. Ex. Tying a boy to horse 4 tall Barent correcting a child, in an outrageous manner, of 17 ham. 126. Oro. P. 181. Salm 545. Hely. 127 176 at. 454.473-4. Fost. 292.478. 199. IM CV. JOH. J.

If a historia take a man in the act of adultory mith his orife, + kills him instanter, - manilaughter, in the correct degree :47th.
191-2. 1 Had. 480. Ray. 212. Kely. 137. 1 Harr. 125. 1 Vent. 158.



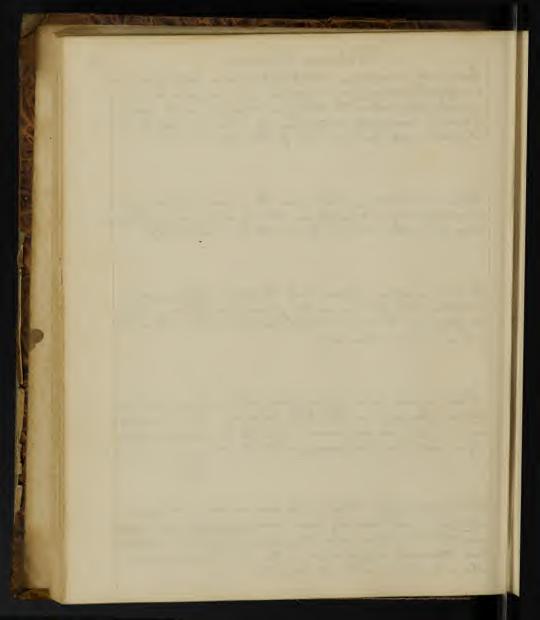
Bare mords, or gestures, - breaking promise - tresp on land never a sufficient provocation to reduce, even a sudden killing to monstaughter; where the killing is voluntary, or the manner of beating manifestly endangers life. 176an 124, Hely 130-1-5. 116al 455-6. 478. Oro 8.779. Noy. 191. Fost 290.316.5647.

Sions, if it appears clearly, from the manner of leating, that he intended only to chastide; so that the killing may unmitentional. 1 Ham. 124-5. 1 Had. 451. Fast. 291-5. 471 200. 2 MEV 5 14.

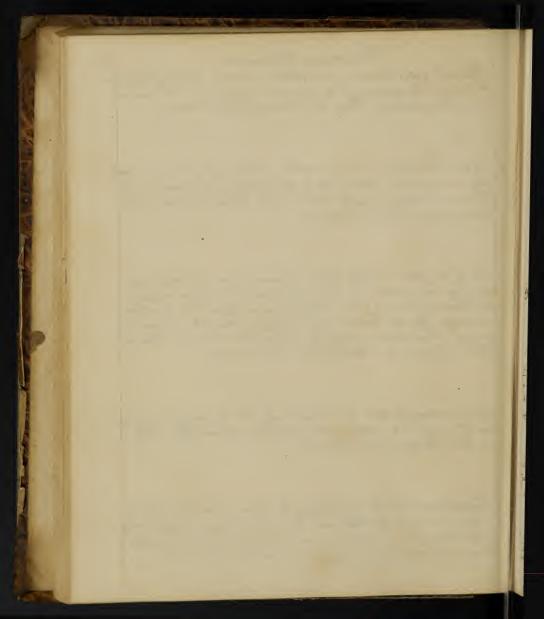
If whom an affron between A. B. the friend of che suddenly interposes, + kills 75, he is gently of manslaughter only No malice prepense. Hely 136. 51. 12 Co 97. Frost. 315 of. (Qu. De not this rule tor general? 1 Hour. 125.)

Manslaughter, on a haden Brown cation, differs from homicide se defendends, in this In the latter case, there is an apparaent necessity for self preservation. In the former, no necessary—act of Juna sen revenge. ~1781. 184. 192.

As to involuntary: This, as the term imports, is always un = intertional; but ensuing upon some inhamful act, making in se. 4 TRL. 192. 1 Har. 111-12. Foat 238-61. INEY 333. - Liffers from homiciae by misuaventure, in this; that the latter ensues upon a lampul act. 4 731 192. Comp. 830.



Felonious Homicide. 35. If death ensure upon an act, which is merely malum prohibition, the rule is the same, as if the act were lanful; i.e. the homicide is by misadventure. Fost 25%. 17 Cul. 475. 2 Cher. 533-4. 9. If one accidentally kills another, while engaged in any make, idle, + dangerous, sport, (as by snord-playing of manslaughter. These are walanful acts . - 1 PH. 183. 192. 3 hst. 30. 176al. 472-3. Fost . 261. 292, 146am. 112. Hob. 134: To, if an act, in itself larged, is done in an unfampul manner; for here, under its circumstances, the act is unlamful. Ex. Throwing down a piece of timber, or a stone, into the street, in a city, the the bordon gives roarning. Tely 40-1. Et, shorting a gun where people usually resort. It. 24 Pd. 192, 1 Ham. 1121. 96. 481. 1 Had 4/2-3 5. Fost 263. 292, 2 MET. 535-7-8. If the unlawful act is a tresp. only, the killing is mundlaugh. ter. If felong, it is meurder (ante) 4 Bl. 192-3. 176 arr. 125-7-8. Trely. 111. 117. Frat. 2018.292.9 Co, 91. Flor 457. Punishment: It is a alergy able sclony eras, not capital, " Eng? in the first instance. But the offender forfeits all his goods + chattely, + is hurned in the hand - landnot for feet, because not capital no attainder. 4781. 193.201. 387.



Felonions Homicide

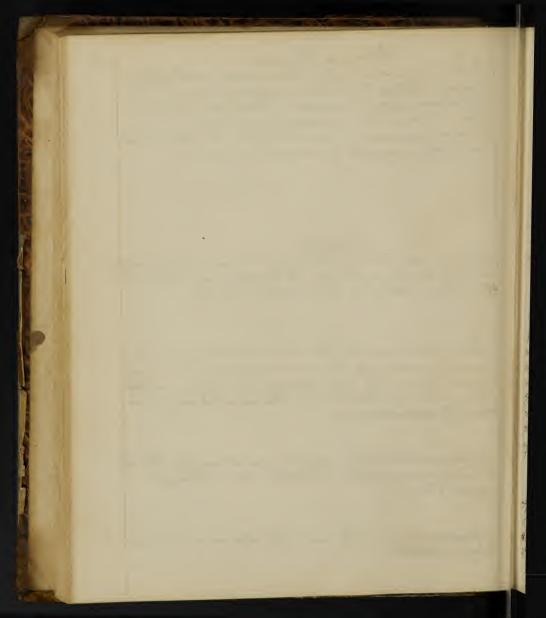
In Cont it is punished by flat. Tother voluntary with forfeiture
of goods a chattely to the state - whipping - branding - a hearbility to give verdict or evidence. - Involuntary note within our
flats - What, at C. L. is involunt? manslaughter, is, in Ion!
but a modernessnor (Y. Harrow Co. Suly Term 1800. State v. Kogers)
But a stuntary may still be Junishes here, as it? I.

This name was anciently applied to the secret relling of another, for which the will, or, of too poor, the hundred, was amercedo. 4781. 194-5. 176an. 117. Kely. 121-4. 176al. 1417. Fost. 5.81. 3 Bac. 661.

Murder is now described this: Where a person of sound memory to discretion, unlawfully kills any reasonable creature, in being, + under the peace, with make aforethought, express, or implied. 3 chat 47. 4131. 193. 176 ar. 118. It is: The unlawful killing of another, with make prepense.

Difference between this & voluntary manslaughter: The latter proceeds from sudder papion; The former, from michedness + make . 4781.190,

"of sound memory" to. (I must every offender be, to be pun = ishable 4"H. 20.25.



"Mulanfully kills another" H. Unlanfuliefs arises from killing without marrant, or excuse. Must be actual killing afour

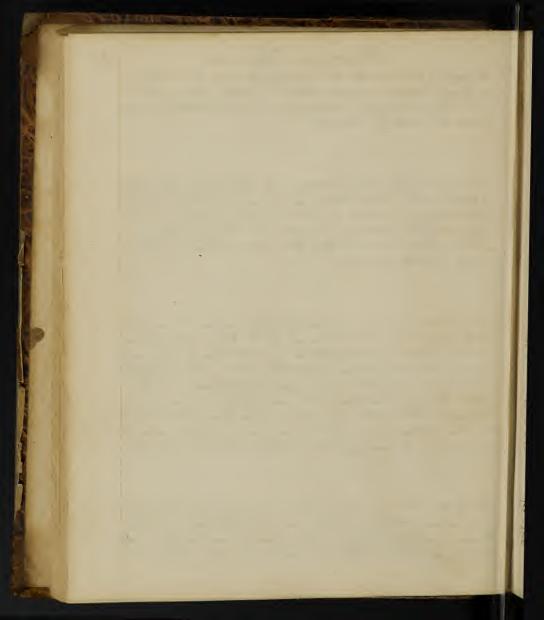
mithout marrant, or excuse. Must be actual killing, affault muth intent to kill, is a misdemesnor only; the formerly, murder. 176ale 425-6. 4 131. 196. 373 do. 664.

Not only directly reforcitly taking away life, (as by a blow, or feel,) is killing mother the definition; but 1st any act of which the probable consequence is death, & which eventually occasions death; & which is milful & deliberate, is murder. Gr. Gorsoning, flaving of 47th. 196. 176am. 118. 3 Bac. 662. Balm. 548. Modes of killing indefinitely

various. Str. 884. Leach. 441.

To of a son, who carried out his sick father, agt his will, in a cold frosty Jesson. Eto, of the moman, who left her child in the frele, convered with leaves only, o it may stricken by a kite. This is killing, and murder. 186ale. 43-2.17 Can. 118. 478-1978 Salm. 545. — So, pands officers who shifted a child about, till it died. 478-197. Leach. 141. So, a gader, knowing a prisoner to have an infectious disease, mantonly confiner, him with another, who takes it, a dieg. 18 cam. 119. 570. So. Str. 580. So. if he wantonly confines a prisoner in a low, unwholesome, room, dernying common conveniences. 18 can. 119. Str. 883-4. L. P. 1. 18 Cal. 486.

If a person, having a beaut, used to do violent mischief, suffers it to go alroads, or turns it love, even to frighter people, & it killy, the owner is quilty of the killing; & in the 1st sale of manslanghter, in the 2th murder, but 18th. 19th. 1



Felonious Harmic ide.

2. So, in Jone cases, where the actual killing is by another E. If one incites a madman to kill another for lays poison for ch, 18. takes it. 18 Car. 118. Olor. 474. 9Co. St. for by durefs of imprisonment, compels another to accuse an innocent person, who is condemned to death

on the latters evidence. Yeat. 14 Eds. III). 1 Ham. 3.118. 3 mot 91. 1 Hal.

431-6. 442.467. 3 Bac. 663. Flor. 19. a. Hely 53.

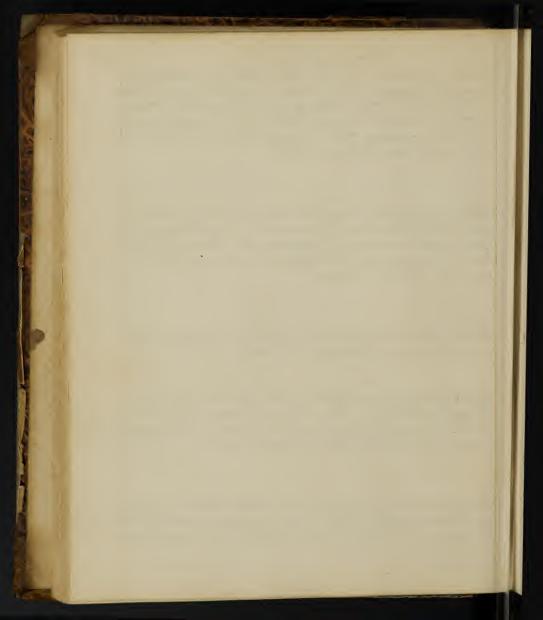
Whether bearing false witners, with intent to take away ones life, is such a killing las to amount to murder, at &. I, provided the inmocent person is condemned descented - In . Seach 444. Foot. 182. It was, by the ancient & I. - no instance for many ages. 4781.196-7.
Foot. 131-2. 176an. 119. n. 3 Inot. 48.

In Cont by fat. bearing false withef wilfully, to f purpose to take away any man's life, is Junished with death.

If a Thysiciantly gives a poten to cure, but which killy; homicide by misadventure only. But it has been holden, that if the person to not a regular physician of, it is, at least, mandlanghter. Sed Du. 2178.197. Inhat 201. 176al. 431.373ac. 554.176an.131.

But no person can be adjudged to have killed nother, in law, unless the death happen within a year of a day, or in combuting which, the whole day, on which of is to be reckoned the first 2112.119. Bucho.

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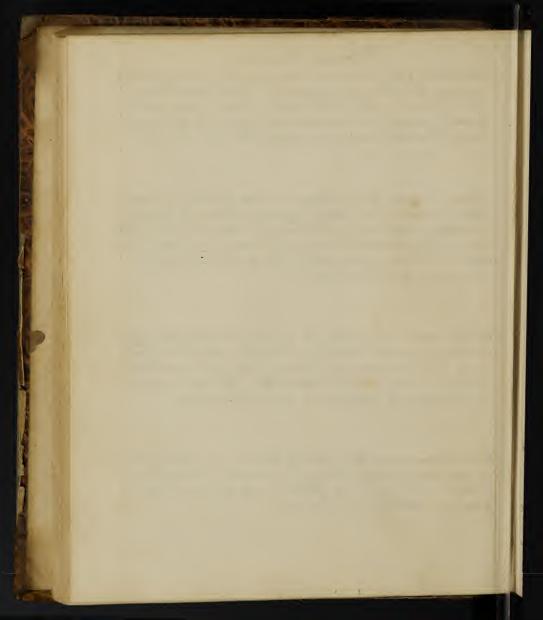


But of he dieg within that time, no evenue, that he might have recovered, if he had not neglected of 17 Cam. Ag. 3 chot 53. Kel. 20. 17 let. 17. 17 Cal. 428. But if the round, or hunt, be not mortal, of the party is killed by the remedies used. I not by the round of not homicible: But this must appear clearly. 3 Bas. 1665. 17 Cal. 428.

A person, indicted for one species, or mode, of killing, not convicted, by evidence of a totally different species. Ex. Forsoning for shorting, - Starring, for drowning of: Secus, when they differ only in excumstance. Ex. Wound given with an are, while, the, but alleged to have been given with a front. 478.196. 3 Inst. 319. 2 Had. 115.291. 2MSN. 320-2, 9Co.07.

10. But if several are indicted, a. as giving the blow, & Big as forese ent aiding of, evidence that B gave the blow, & that A was present, aiding of Brill maintain the indictment. 1 Had. 437-8. 2 Il. 232. 96. 87. 112. 43. 42-0. 1 Flow 98. 2 Me N. \$22-5. 539. — For both are quilty as principaly the difference is only in circumstance.

The indictment must flate, that the prisoner gave the deceased a mortal mound, or bruise bleach 98 i.e. I suppose, where the means employed more violent, as flatting, striking, of Secus, of poisoning, starring, of I conclude.



Felonious Homicide.

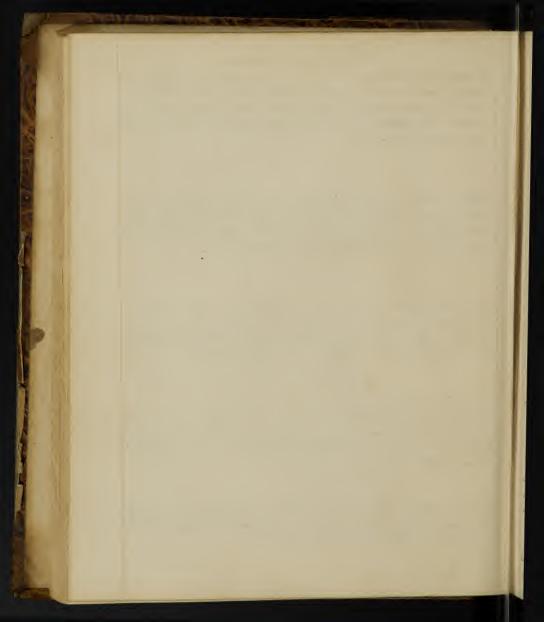
"A reasonable creature, in being, o under the peace." Alieng, and outland, are mithin the rule killing any person whatever, except an alien enemy, in time of man, with malice prebonse, is murder. All others are "under the peace." 4781.197-8. 3 Inst. 53. 176al. 433. 378ac. 665. 176an. 121.

Helling a shild in ventre so more, is a great mistorision only, not in rerum natura for this purbose . 3 Bas. 085. 478. 198. 176 ar. 12). (Mistorision is a high offence, under the degree of capital, but bordering upon it . 4 Th. 119. Hely. 71. 18 Cal. 374. 17 Carr. 85.

But if the child be born alive, I afterwards dies, within a year of day, of the wound of, received in ventre fa mere, it is murder, by the better opinion It Bl. 198. 176an. 121. 3 hot. 52. 176al. 438. cont. But the death must be within a year of day. 4786. 197.

Epithet "reasonable", in the definition, means human: not, "having the faculty of reason" madner, idiots of are mithin the definition. Incites of a madman to hell himself, quilty of murder, as principal. 176an. 18. 176al. 431-0.

If one counsely another to kill a child in ventre sa mere, + being box, it is killed, in pursuance of, he is acceptory to murder. 176at. 21. by. 180. 3 Inst. 51, Hely. 127. 176al. 429. 433.



Holonious Homicide, 42

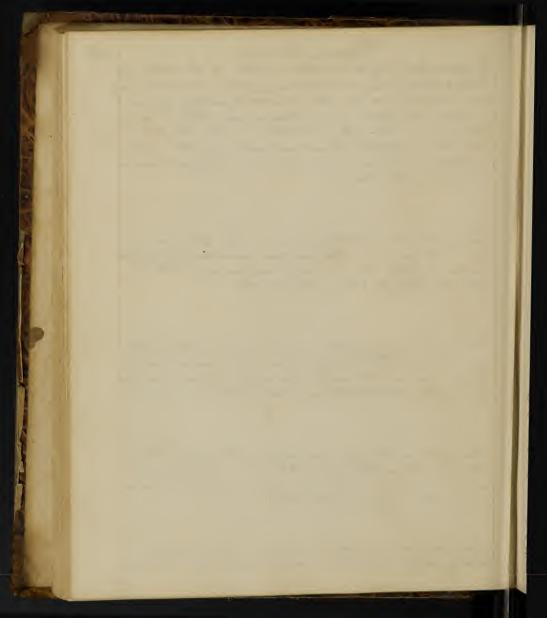
By fat 21. Jac I sty the late flat law of Cont, if the mother of a bastara child, found dead, endeavours to conceal its death by burging it privately, or in any other way; deemed quilty of murder, bulless she can prove, by one mitness at least, that it was born dead. I Han. 121. 3 Rac. 85. 2 West 371. Now, the former stat of Cont. rebealed: Fanishment, under new flat. sitting or gallong of . binding to goods behaviour, - & imprisonment, at the discretion of the court.

The construction, practically given to these state here & in Eng., makes necessary to the mother's conviction, presumption evidence, at least, that the childs may loon alive. 4781. 198. 2 Gr. 303-4. Nely. 32. 2 Harr. 619. 2 Mer. 382.

"With malice aforethought, express or implied"- grand criterion it is not spile or maler clines to the deceased; but evil design in general; the dictate of a miched deforance, malignant, mind & MeV. 348. 471. 198-9. That 250. 2 Rd. R, 461. Kely. 126-7.

"The court, not the jury, are judges of the malice" (L. P. 1493. 25tr. 7/3-4. Burn 395. 474.937. 39. P. 1412) - i.e. of what amounts in law, to malice - fo that, the facts being given, the point is a question of law 2 Me S. 54.76

Malice presence is express, or implied. Jais to be express, 1st, when one, with a deliberate, of formed, design to kill, or otherwise



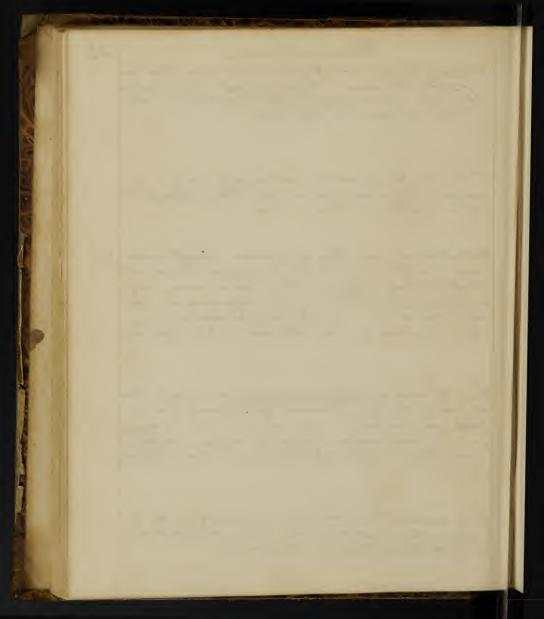
D'Elonious Homicide. 43. personally to injure, some particular individual, kills him, in executing that design: Tying in mait, - former menages, old grudges, of are evidence of that former design. 176al. 451. 176an. 121-2. 3 Bac. 566. Kely. 127-30.

2nd There one dills by an act, which indicates enmity to all mankind . Ex. By shorting into a crowd: This is sufpress. 479. 199-200. Jenk Fost, 251, 13 Bac. 665. 17 Cal. 3.46.

Districtions not well taken by Hackstone. Express malice 7.45. seems to me to be, that, which, in point offset, concurs with the act of killing - implied, that, which so concurs, only by implication of law. (18 Carr. 122.) Ex. 1. Discharging a ball, with intent to kill, or hunt, J.S. or whomsoever, it may strike. -2. Doing fame set, with intent to kill, & feed, ahox.

So, in the case of deliberate duelling, it is express. 176am 122.178 ulst 86-7. Hely 129. _ No excuse, that the party Slain at = lacked first, - or that the intent mag, not to kill, but disarm: for the deliberate design to obtain the mastery is express malice 378 uls. 171. 176 al. 4523478. 199. Hely 271. 3 East 581. Frat 205-7. 2018 1.508.

Co, the seconds of the Derson killing, are quite of murder, by express malice; - & according to some, those of the opposite posty. In 181.199. 1 Hour. 124 Freen 574. 1 Had. 443. 45.



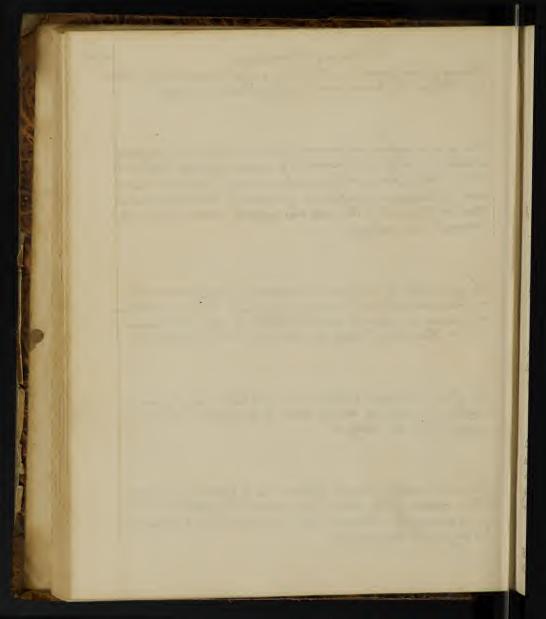
Giving a challenge is, at C. L., a high misdemes non 3 East. 581. Place, the Junishment is prescribes by stat.

If a person, upon no provocation, or a slight one, suddenly attacks one & kills; it is murderly malice express. Kely 2, 60. 127-9. For for ernel & ferocious an act, in Juch a case, is evisance of hardened, deliberate, malignity towards the deceased. I Ham. 124. Fost. 255. (Th. calls this implies malice 471. 200. Qu. It seems to me express.)

So, generally, if on even a sudden, + great, provocation, one beats the other in a cruel, + unuoual, manner, + kills him, it is murder by express malice. 478, 199. Ex. 180y tied to horse's tail oc. 176al. 1454. 475-4. Hely. 137. 176am 126. Cro. C. 131. Palm. 345.

To, if on a sudder guarrel, the who kills, seeing to have been master of his papion, at the time; it is murder, at the malice is express. 176ar. 12 3. 7 Lely. 35.

Hone, committing a breach of peace, (as by fighting of) suddenly kills an officer of the peace, who attempts to supported at, he is quitty of murder 1 Hears 127. Hely . 56. 2 MEN. 569-78. I max 52. 48. 40. 98. 08. 8 Frost 308. 310.



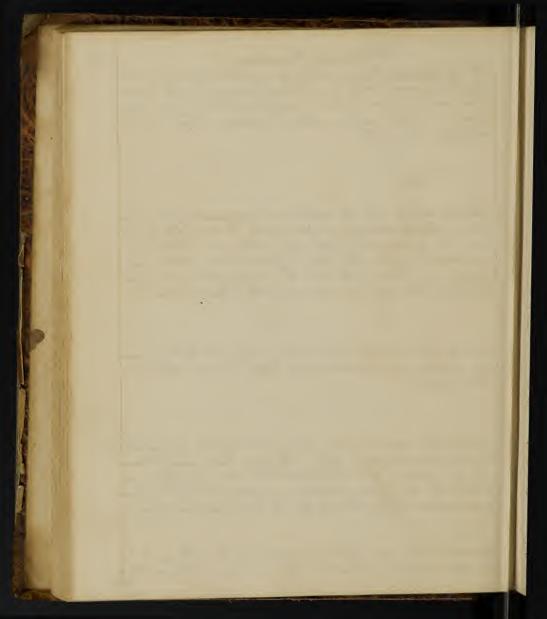
So, of a forwate person, acting in air of the officer; or, if no officer be present. Hely . 68.114. Pout the object of the interference must be made known - except in the case of an officer, known to be such - acting within his district - Secus only mansplaughter. 13 loan. 127.

11. Malice is implied, when the kelling is in consequence of an unland ful act, intended altogether, or Johncepally, for some other purpose than that of kelling the person slain. I Ham 122-6 & 131. 200-1. Ex. One shoots at a forth, with intent to Jeal, & kills a person accidentally - or, shoots at A. + kills 13; - or, lays poison for A. which 13. takes, of Sid. & Hely 111-17. 1 Hoal. 405.474. (No. 87. How 101. 3 Bac. 667.

But the intended act must be felony - Jeens, the killing is requestarly, manslaughter. 3 Bac. 616-7. (6672) 176km. 112-19. 126-8. Hely 111-19 4741. 183. 192-9

Express malice seems to be that, which in point of fact, concurs with \$4.3. The act of killing the person Glain. Implied, that, which foconcurs only by implication of lam. INEV. 549. 276am. 122-5. - Exs. July: 5, one gives poison to a moman, to procure abortion, & it kills the moman malice implied. 474. 20.176al. 429. Qu. Is the act intended felony:

Hustand gave his write a possoned apple, to kill her - The gave it to her child, + killed it, not herself - Implied malice. 176 am. 125. Hom 479.



Felonious Homicide. Bohat 51. 9 Co. 81. Jank. 535. 176al. 435. 441.467. 2 M. N. 534-5-6. Stost. 201. Hely. 111. L.R. 158,07.1581.

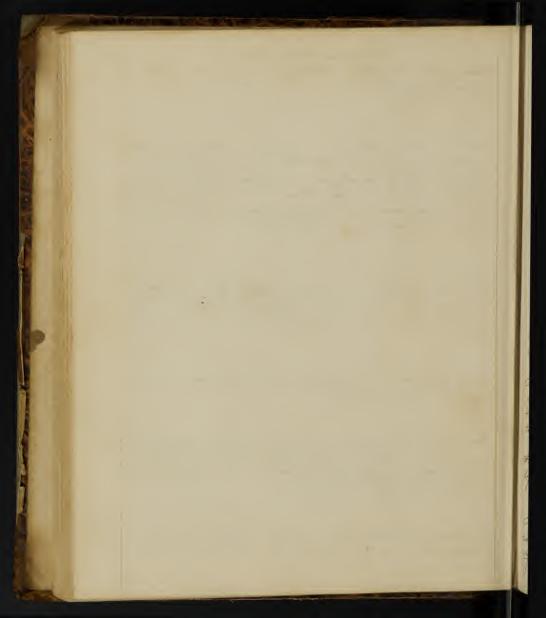
But when one kills, in consequence of such an act as indicates en = 3.43, mity to all mankind, the not to the deceases, in particular, it is extress. Ex. Helfully shooting into a collection of people, + killing one. 478.199-200. 2MEN. 334 C. P. 143. 17 Can. 113. 17 Cal. 478. 3 Shat. 57. First. 20-2. Hore the intent. concurs with the act of killing. The intent being to kill any one, whom the ball might firihl.

If one kills an officer, in a struggle to escape from lawful arrest, it is murder by malice imphier. Design mas, pricipally, to escape. (176an. 126-9. 1861.86.130. 186al. 463. Fost. 29. 135. 308.) _ not to injure the officer.

In the last case, it is no excuse, that the process may errore - oug - not road, by being for

Same rule, the the officer ded not inform for what cause he was about to arrest. To, the the officer (if he was a Jublicone), did not show his marrant, beforehand. I Cam. 129-30. 960-5-8) orglo. 66-8. Fost. 187, 311-2-8. Con. J. 250. 450. 2 M EX. 371.

All homicide is presumed to be malicious - Onus probandi is on the seemed 4781. 201 9 Co. 56-7. Bost 255. 1 Hoan 124 Kely 27.112. 2M.Y. 345. =



= Therefore, all homicide is murder, of course, unless; 1st quatified by command, or permission, of law: 2nd Excussed, on ground of misadventure, or fell defence; or, either the involuntary conse=quence of some unlawful act, not amounting to felow, or, oc=casioned by some sudden of violent provocation. It The 201.

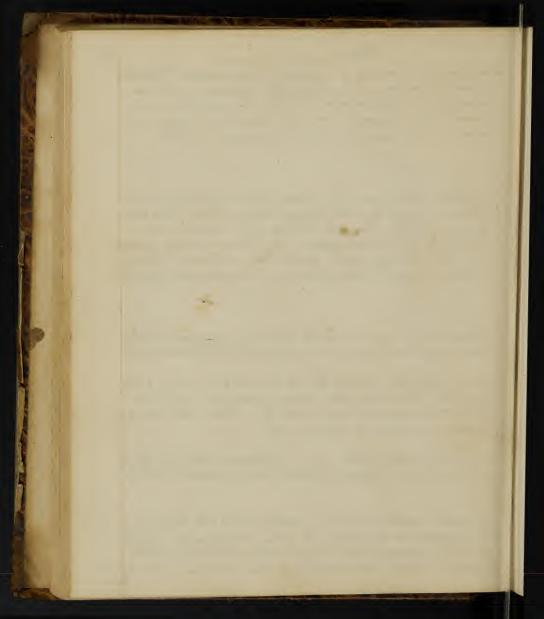
If Leveral are engaged in a foreconcerted unlawful act, some of them, in execution of the general design, kills a third person, they are all quilty of murder. Sicus, if the kelling is not in execution of the Common design, of the others do not aid, or consent to, it. Then, the slayer only is quilty. Hely 113 of Fost 357. (So, if the unlawful act is not freconcerted as in a sudden afterny. Hely 113)

Funishment of murder is death Originally, clergyable (So that unlearned offenders, only, were capitally Funished 474.201.17hal 450.

Now, by 3 Eng tats. 23 Hen VIII. 1 Edm VI. 4+5. Th. + M., Clergy is taken array from murderers, their abettors. procures, o connections. + M. 201. 2 Ham 485-9. 631. 3 Chat. 53. 2 Heal 399. - These Itals seem not to extend to accepsories after the fact. -

In Cont. it is death, by fat. - Audgment that he is langed by the reck till he is dead . 2 Ham 631. 2 Hal 399. 3 Inst. 57. 211. 478. 463.

A woman condemned during gestation quick with child execution is respited, till her delivery. But this is no excuse for not fleating or, for judgments being delayed. 2 Year. 638. Finch 478. 8 Inst. 17. 2 Had. 418. 478. 895. That respiting for this cause can be had but once forer

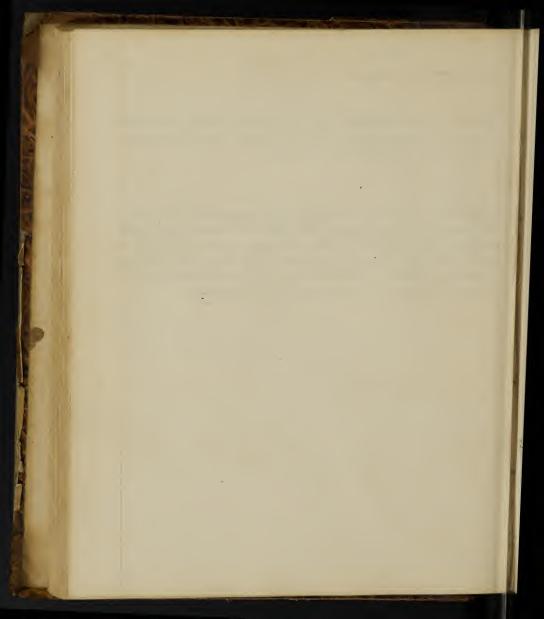


48.

As to becoming insane, see \$ 7. - 4781.39 5.

Execution is not complete, till the convict is dead - on revival, he must be again hanged: Former hanging being no execution. 4M. 408.2 Hal. 412. 2 Har. 658. Finch 467.

NB. When one murders an officer, endeavoring to arrest him, the prosecutor is not bound to show that the deceased mag an officer, othermore, than by proving that he acted as Juch. 47.72.366. 2MS. 488. Que. Chay not the prisoner than forove that the decised may not an officer? I trust he may: The rule relates, only, to the proof necessary to be adduced, by the prosecutor.



There are certain instances, in which, murder, as being more than ordinarily heinous, is denominated petit treason. It is, intended, no other than murder, in it most odious form, & degree. 418.202-4. Fost. 107.324.335.

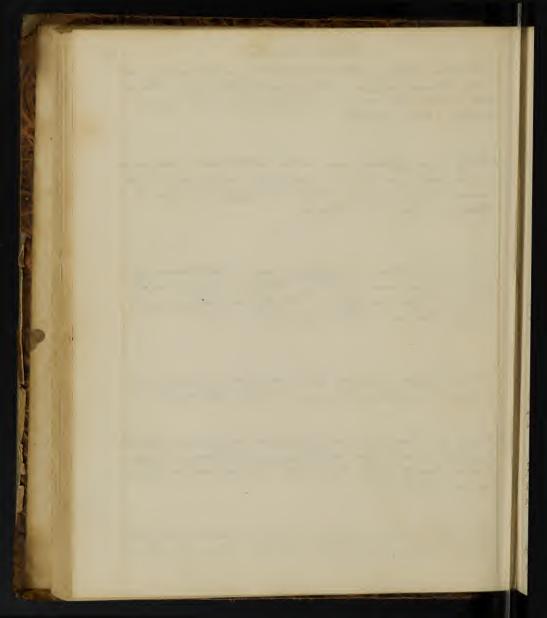
At C.S., many offences were called petit treason which are not now be. Finally by a subject - grand jurors' discovering the King's counsel. When attempting to kill her husband of 1 Ham. 181. I Han. 181.

Now, by Stat. 25 Edw. III, no offence can be petit treason, except it the following instances: 1. Where a Germant kills his master. 2. Wife, Let husband. 3. In Eng? an ecclesiastic, his melate. 5 Bac. 144-3. 24 M. 203. 176an. 131. 2 M. N. 5-74-5.

Called Treason, by reason of the violation of private allegiance in addition to murder 474. 203. Fost. 107, 324.336.

12 Hilling of a hustand of not petit treason, unless under such circumstances, as monto make the killing of another person, murder 5 Bac. 14.17 Cam/32. Say. 384. 18 Cal. 378. 380: as petit treason includes murder. 2MeN. 574-5.

If a rife, divorced a mensa of kills her husband; " petit treason: Isang, if a vinculo of 478.203. 176al 380-1. 176am. 135. n. 3 Bac. 141.



If a nife procure a stranger to murder her husband, being herally absent, at the time, she is accepsory to murder only. But if a stranger procure the nife to do it, he is accepsory to petit treason. It is sace from the petit treason. It is a superior that the accepsory's quilt follows that of the principal.

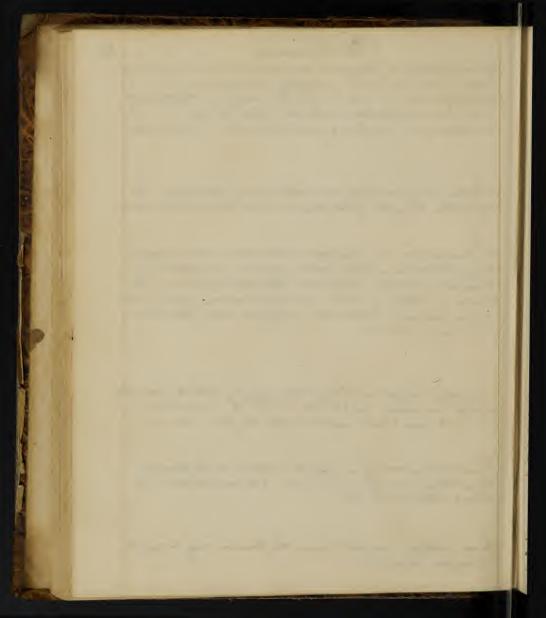
Murder of ones mistrefs, or masters orife, petit treason the rot within the letter of 25. Edm. III. 5 Bac. 142. 3 Bas. 20. Elon. 86. 176am 132.

So murder of one, who has been master, upor malice concerns during the service is petit treason; because in execution of a treasonable intention. 17 Carr. 132. Plor. 200. 10. 99. 5 Bac. 142. 474. 211. Murder of a Father by a child, not held treason, unless the latter is by a reasonable construction, a servant to the father. 17 Carr. 131-2. 3 Inst. 20. 17 Cal. 380.

Originally clergywhle: Clergy taken away by 12 76. VII. from assess abettors, o counsellors - by 23 76. VIII. 4+5. Th. + th. 4 14. 204. 5 Boe. 141-4+5. Th. + th. takes it from acceptones after the fact. 1 76 am. 133.

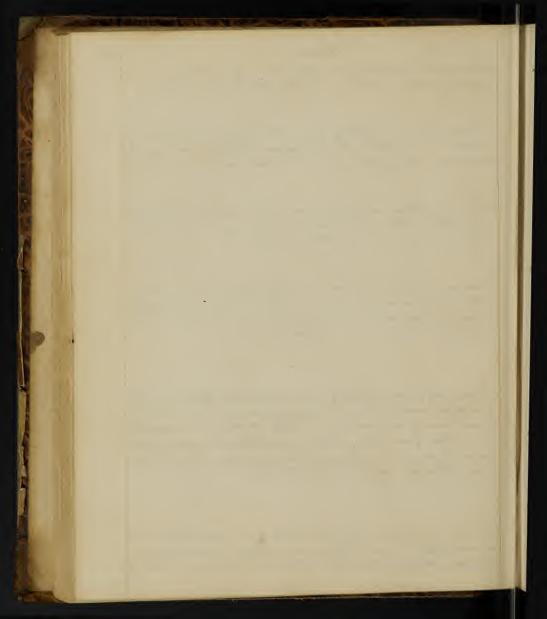
Eunishment, in case of a male to be drawn to the place of a hanged: Female, to be drawn of a burnt. 478. 204. 136 at 382. 2 It 399. 3 Fast 31. 2 Ham 531. 124. 138.

In an indictment for petit treason the prisoner may be connicted of murder. Leach. 399.



Arson. Arson is the malicious & wilful burning of the house or out house of another. 4781.220.176al. 536. 3 Inst. 56,2 Dr. 188. Leach. 218. Not only the bare direlling house but all out houses, that are parcel of it (i.e. within the custilegeor homestall), as barns, Ita-bles of may be the subject of arson un. 22. 1 Hal 567, 42. 20. 1 Ham. 165. To a barn, filled with corn, is within the definition, this not pare cel f. 4M. 221.1 Har. 183-6. 3 Inst. 69. - Barning a stack of corn anciently aroon - not non. 4M. 221. 176am. 185. Burning the frame of a house is not arson, because not mother the meaning of domes" 1 Hear. 165. 1 Had. 368. 3 Inst. 167. 1Barns 259. Burning a prison is arson being the house of the corporation which owing it. Leach. 67. Arson may be committed by burning one's own house, it is fair, if anothers house is burnt in consequence of it. But here, the Offence consists in burning the latter 474.221. Cro. C.377. 1 Ham. 16. Lead. 217-19: For, if one, feises lin fee, or possesses for years only, of a house standing at a distance from all others, burns it not arson. 176am. 1,08. Cro. C. 377. 13on. 357. Fost. 116.

And if one, so seised, or for passed, in town, burng his own, with evident intent to burn another's, but actually burng his own only, not aron. 1 Kam. 106. 1 Wal. 368-9. 4 M. 321. Kely. 129. Fost. 113-18. Con. 2.388.



Arton.

22.

23. My much the stronger opinion - Leach 217-19. Hely 29. (Elg if he is in Forp.", under an agreement for a lease for years Leach 29. So, of tenant from years to year. Leach 285.

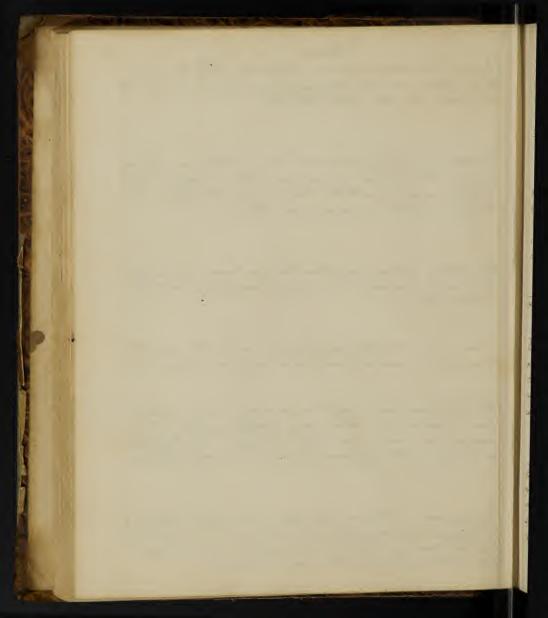
But the milful firing of one's own house, in a town, is a high migdemeshor; incurring this, imprisonment, billory o Jureties for good behaviour, during life 474. 221. 176al. 508. 176ar. 186 y. Hely 29. The indictment should not be for arson. Hely 29.

If a landlord, or reversioner burn his own house, while in pop? of his tenant; it is arson: It is, for tem, tenants house 4796 26. Fort. 18.1 Hour. 180.

Arson in Cont., is, substantially the Jame as at C.S. except that by our flat. the burning of almy barn, house, or outhouse is arson.

The Junishment here, is diff tunder certain circumstances, from the Jame at C. S. (Stat extends to ships + refsels. Is the meaning, that burning these, in Cont. is arran ? IThe burnishment is the same; but the offence, I trust, round harry be called arran.

Burning, "what: Norther a bare intent, nor an actual attembe, by applying fre, is a burning, if no bart be burnt. But the actual bubinsing Hamy part, is, that it be extinguished, or go out, itself. 43h. 223. 21Mer. 003. 176am. 107. 176al. 570-9-5: 30het. 60.



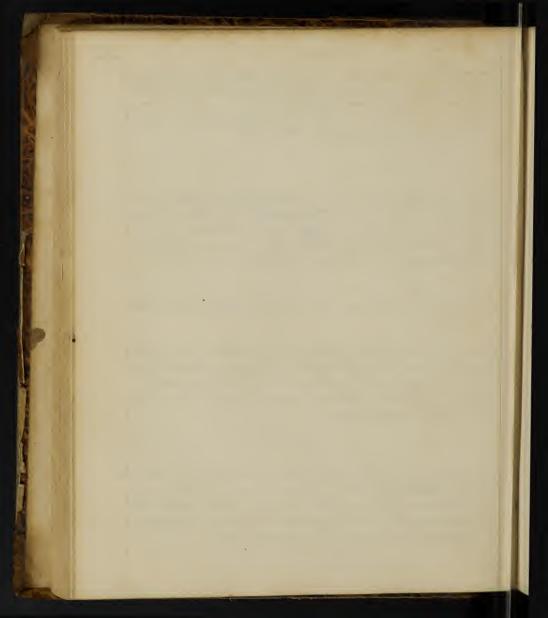
Burning must be "malicious" - Jeens only a tresh - burning thre negligerce for accident, not aron 17 ban 18, 1862. Flor. 470. 488. 222. Ex, if one in shorting, accidentally fires a house. - Vet, if one intending maliciously to burn a 4 house, accidentally burns 134, it is abson: For the felomous intent: 176 arr. 107.

At is a C.L. Celony, Sunishable with death; (burnt to death in the reign of Ed. I. 478. 221-2); I not dergyable UH. 374 But it from to me to have been entitled to clergy by Stat 25 Ed. III, but was outled of it, first b, 21.76. VIII. which being repealed by 180.71; it was outled again by 4+5. Th. 471. 222-3. 2 Ham. 481. 503.

Danied also to acceparies before the fact by 4 of EL. M. 474, 222-3.

By our fat this offence if committed in a person of the age of 16 or more is Junished with death, if prejudice or hazars habben to the life of any one. It extends to burning outhrises, while to refeels. Subsone a person under of commit the act? - Junishable for a misdemesnor?

By another state of ours, if any male of the age of or more shall only the following burn, or attempt to burn by setting on fine, any state house Counthhouse, tornh. Schoolel, church outhouse, Thos, store, whis or we bel, - I no prejudice, or hazard the nemgate, at the assertion of the court, not exceeding "years. =

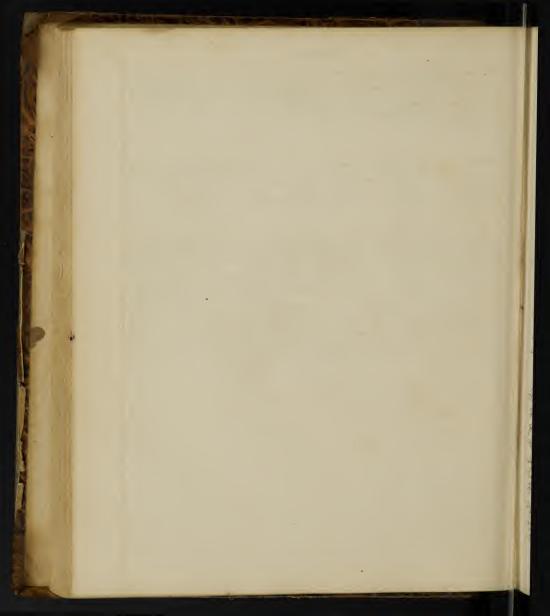


Arson. 54

= For the Jecond of fence, confinement in nemgate, for any limited found, or for life. But, according to the general rule, the second of fence must be committed, a flet a conviction for the hist. 186am. 188. 1861. 324.70, 58. Dy, 325. 2 Buls. 349.

In the case of a female, confinement in the com worklouse, or com gad, in the county in which she offended for the Dame period, as males in nerghte. — Must she be 10,3

Do the words in this stat, "attempt to burn by setting on five", mean such burning as falls within the P. S. definition subs? I It seems they do Ifos, it may be argued that the burning punished by the first stat. must be total. Ped Qu. Stath hade at diff times—burning has a determinate meaning in law. — Does, then, the partial burning of a ship or repel, come within the meaning of the first shat! I conceive it does. — The jame act is con-templated in case of a veryel, as in passe of a house.



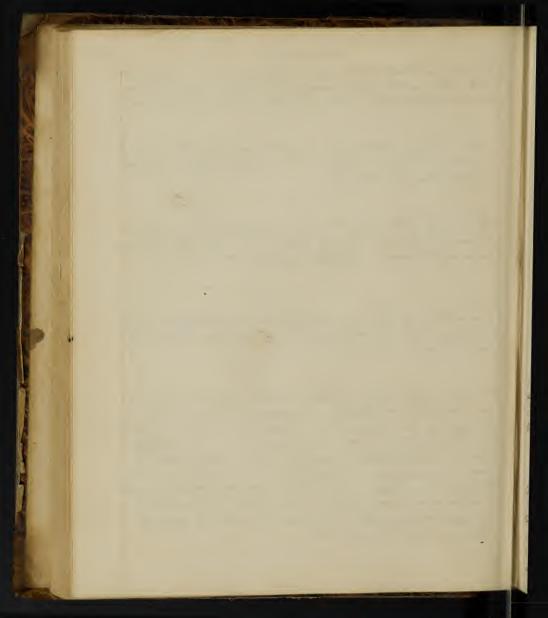
(Burglary.) It act of breaking + entering into the mansion house of another, in the night peason, with intent to commit a felory. Fire 224. 3 Shat. 63. 176an. 139, 173 ac. 335. 176al. 549. 224. 350) The usual deplate.

Off to the place: Croms not absolutely nece pary that the breaking should be of a mansion house: Walls of a torn, or a church. 471. 224. 176an. 152. 173ac. 335.

The necessity of the Subjects being a mansion house, obtains in the case of a forwate building, only 474.025.17 Carr. 113-4. The definition ought to include churches, o bralls of a town. INEY. 500.

The insertion of the words mansion, seems indispensable, in the indictment, when the breaking is of a forward house; Trous, not, it seems. 176an. 102. 1 Bnc. 335.

The term "mansion house", includes all out buildings, which are "barcel oc of mithin the curtilege of homestall (p. 51): Being forotected, of privileges, by the capital house. 2171. 225. 176al. 558. Ham 183. Sort 54. Hely. 27. 122. 82. 178ac 335. Foph. 42.52. Leach. 320. — The curtilege seems to be that portion of ground, which is inclosed with the house, by one come fence, or connected with it, directly be a fence. Therefore, an outhouse & feet distant, not connected by an some expanded by an open papage, or not mithin, nor connected by my fence of crolosing loth, adjudged not within the curtilege.



Room, or lodging, in a porivate House, if the owner does not lodge init - or, if he enters by a difft outrand door, is the mansion house of the lodger, a Edus, if the owner lodges in it, o enters by the same outward door. Here, there is only one mansion house, that of the owner 478. 225. Hely 83-4, 176 al 530. 176 am. 163-4. Cons. 1.

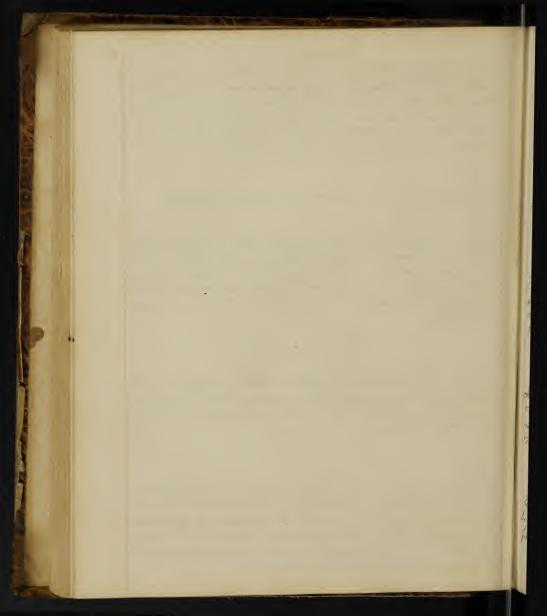
In uninhabited house cannot be the subject of burglary

2 Eal 532. 1 Ham. 103. Cont. Hely. 27. Leach 90. 230. 278. 364.

If a has a shop of mithin his curtilege, a lets it to 13 who never lodges in it, to work in; burglary cannot be committed in it. It is not as mansion house; being severed by the lease; nor 184; for he never lodges in it. 47H 22ts. 225. 17bal. 5\$4. 19bam. 184. 18att. 33. 18ac. 335. Being, if the hirer lodges in it, 1 Ham. 04. n; or, if it were not leased, by the owner.

A house in which one foretimes resides, the left for a fort season, - amino never tense; - is a mansion house, the no one is in it, at the time. 4th 225. 1 Hoal 566. First. 77. 176am. 182. Mo. 660. Hely. 46. 52. 6.7. 486. 40. Toph 40.

So a house, which one has hired to reside in, & ironght part of his goods into, the not lodges in. Kely 45. Fost. 77. Ray . 276.17 learn. 162. The house of a comporation is within the definition; its officers living in t - mansion house of the conferation. 471. 225. Seach. 67. Fost. 38-9.17 Bac. 335. - Not committed in a tent, or booth temporary - it is a tabernacle. 18ac. 335. 471. 226. 176 am. 164.



Under our flat burglang may be I not only ag at Q. S. but by breaking of a shap in which are goods many o merschandize, the at a distance of not lodged in.

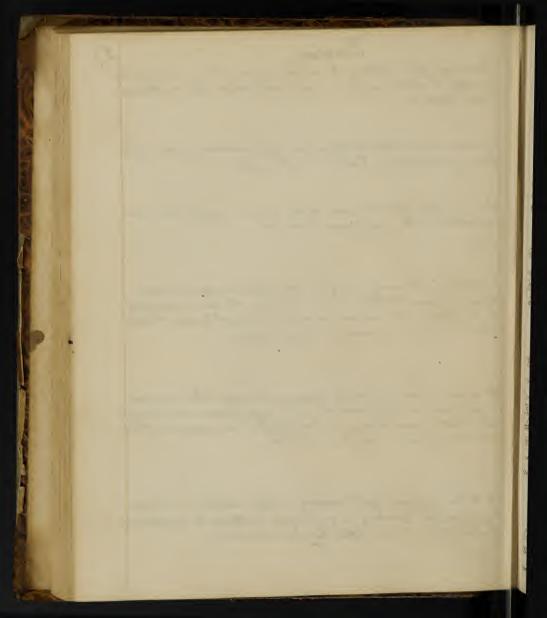
Decided, in Cont, that the cabin of a reflet, containing goods, may be the subject of burglary. Rost. 63. — Quot mirum!

It is exential that the name of the owner, or occupier, of the house, be insirted in the indictment. Leach Ixo.

"Clight Jeason". Formerly, it might be committed at any time between sunait + Sunrise, 4781. D24 178de. 334. But now, the term include only the time between the evening & morning, trilight. 478ac. 224 176al. 350. 3 Shot 53. Cannot be committed, during trilight.

It is faid, if there is formuch daylight, or trilight, that one's countrance can be clearly discerned; not "night feason", mother the definition: But it must be daylight, or trilight; not moonlight. 478.234.
176am 100. 76. 5.a.b. 1780l. 524. 2 Mer. 500-1.

Is to the manner both breaking & entry necessary - need not be at fane time: Breaking on one night Hentering on another supside 171. 225. 176al 53%. 176al 184 1864 1864 87 8. Seach 342.



Burglary. 50

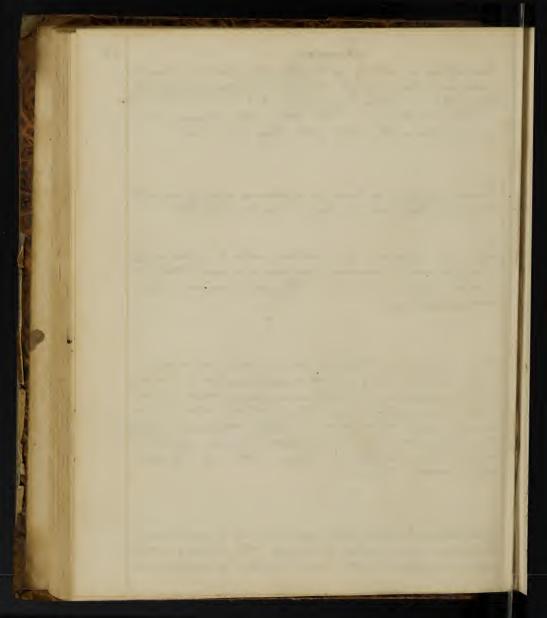
Breaking may be, not only by thrusting open a door, but by breaking or taking out, a pane of glass - picking a lock, opening it with akey-lifting a latch - or loosing any fastering. Ich 1. 60/2. 478 226. 18 can. 150. 18 Call 508. 527. 331. 2. I So, coming down chimney; for it is as much closed, up the nature of the thing will admit.

Breaking fictures, in the house, as cupboards, chests of not within the definition fint. Fost. 108-9. Wely. 91. 176al 527, 20 KEV. 608.

Entering by an open loor not breaking, within the definition: Leug of harring entered, he break an unren boor of a room. 478h. 200.18bal. 333.18baba: 180. Hely 67. 2 M. N. 801-2. Phis last is breaking the house-breaking chest of not.

Whether breaking out (the party having entered with intent of without reaking) or, being in by the owners permission, is a breaking within the defenition at C. St. spinions contrary. +7H. 227. 16ad. 334. Por that 2 arm declared to be so. 1Bac. 833. 47H. 227. 16ar. 18. 16cre, the entry is before the breaking. Cr. Daking lodgings with intent of the entry is before the breaking. Cr. Daking lodgings with intent of the source out fup, without a forevoing intent of he commits a felong, o breaks out: I loug, in both cases, if he goes, without breaking. 18bar. 100.

Entry procured by fraud fruth intent of ut Sup is burglarious. Ex. Being let in under foretence of business, other steading - or forecuring an officer to enter under foretence of searching for



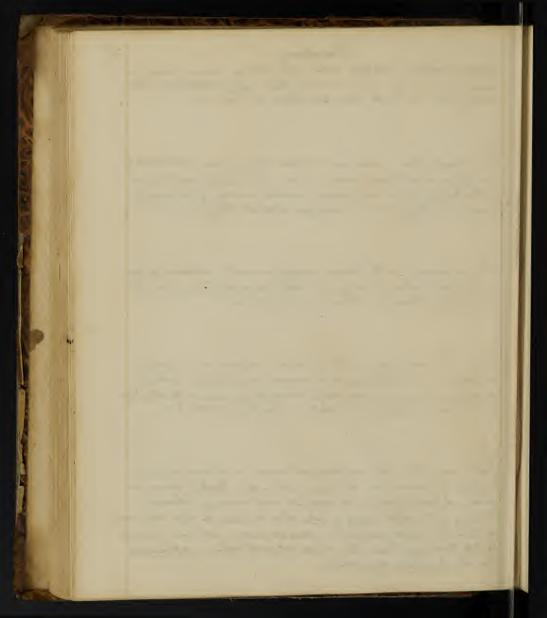
traitors, + stealing, at sup. Here is of breaking, opening being occasions to frank of Sarr not to be thus evalued 471 1226-7/176am.
61. Hely 42-4. 32. 03. 82. 176al 532. 3 Inst. 64, 173 ac. 333.

If a servant open & enter his master's chamber door (with intent of) or a lodger, in a private house, or inm, opens, senters, another's door (with intent of) it is a hurgharious breaking o entry of the mansion house of the foroponictor, or occupier. I'M 227. Hely 7, 21 kg. 501-3.

Lo, if a dervant, in the house, conspire with a rotter, olet him in, by night, that he may not, both are guilty of burglang. WH. 227. Str. 881. 176al 573. 176am. 102. 2 Men 5041

14. Entry! The least entry, with the whole, or part, of the body, or, thrusting in an instrument, or meapon; as a fistol, hook, of,—
liacharging again of constitutes burglarious entry 478.227.18al.
553-5. First 1081 Tham 161-2. Nely 57. 18ac 384 DeNer. 803.

But it seems, that the instrument must be introduced, for the surpose of committing the felong mith - ag a host to draw out goods - a pristol, gun, of to demand one's money of Secided, I. Bailey. 178.— that boring a hole, thro the door, so that there were chibs on the insure, may not a complete entry - not being introduced to take proberty I Hoam. 102. n. Level 342) or to kill, or intimidate, for the furpose of coolling.



On an indictment for breaking of obsteading deft may be acquitted of the breaking, & found quilty of the steading Leach 891.

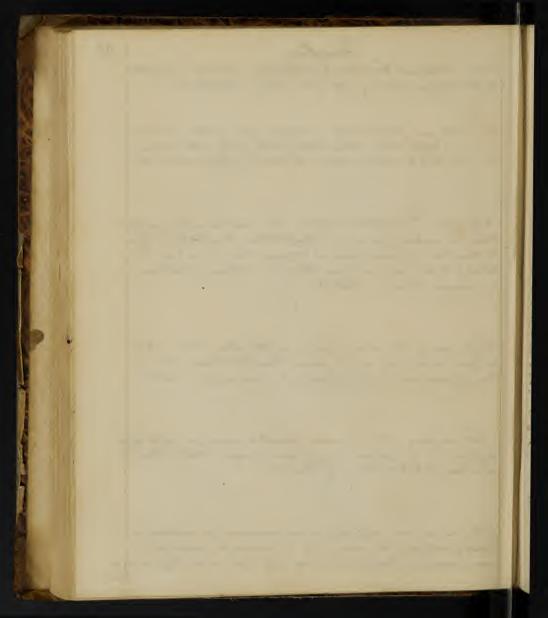
If wereal join to comment a burglung some of whom stand it a westerne, o match, while others break of all quilty of the breaking of Nac 334. 176al. 80-1.223.533. 136am 102. Fist. 350-5. Hely 111. 2 Mer. 604.

"Wit intent: To constitute burgham, there must be a felonious intent. Stay the breaking of we a more triap 478 227. 1 Hours 184. 27.99. Hely 20. 67. 18 Cal. 57 D. Exception case: A pervant, having run away, returned of to take his own money, 18 Carr. 104 - Stay of it had been to rob, murder, stead, of 1 Bal. 335.

Sufficient if the intended act is a Stat. Selony, the not a C.L. Er. Rape, which is not a C.L. felony, I Hoam 104. 4 186 228. Abr. 481:For a fat. selony has all the properties of a selony at C.L. I Bac. 336.

Not nece form that the intent should be executed - intent alone, sufficient: Of the vitent, the jury are to judge . 474.227.8. 17 Ham. 159. 165. m. 1862. 549. 2 St. 360. Fost. 107. 178ac. 336.

After one has been acquitted, on an indictment for breaking a house of releading the money of A, he cannot be indicted for the same breaking, & stealing the money of B: Bitt for the theft; he may be foren

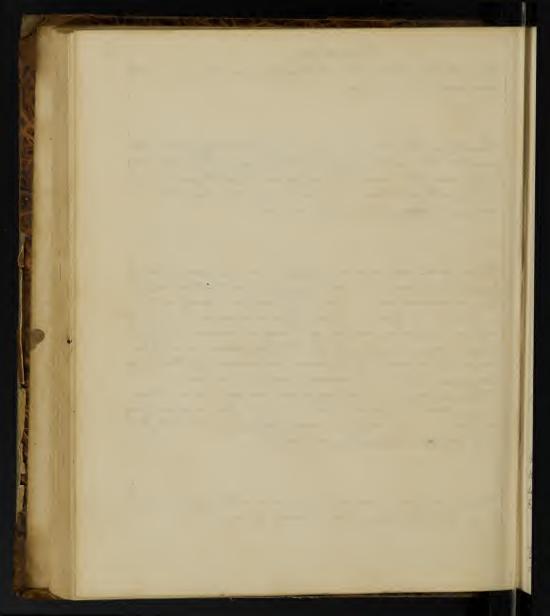


Hely 30 52 2 Ham. \$27. - For the breaking of is the same in with cases; aliter of the stealing.

Fundament: Burglan, is a felony at E.S., but clergyable: Nonpunished with death, clergy being taken among by that. [2.0] 18 Eliz. - also taken among from acceptoning before the fact by that. 3.4. 1. M. M. 4 TH. 228. [Har. 103. 2 Had. 304. 173 ac. 336. - this setal. exlends not to acceptonies after the facts

In Con, for the first offence, nerrogate - if a male, not exceeding 3 years - for the Jecond, not exceeding 8 years - for the third, Juring life: in Common Cases. - 18 ut if the burglar be quilty, in the perpetration, of personal abuse, force, or violence, or 96 armed mith any dangerous reason, as clearly to indicate "riolent incention"; - nerrogate, during life, for the first offence, or a left the initial of the discretion of the course - not, however, left than y years. "Dangerous reason" i.e. reasons of death, I subspose. "Tolent intentions" i.e. agt any person - or any one, who Shall oppose them, I suppose. Becided, in Cont. Hat burglary, being an offence at C. H. may be prosecuted as such; I that the fact only declares the punishment. Thoot. 39.

Female. Contined in Common work house, or common good, it fap.



69

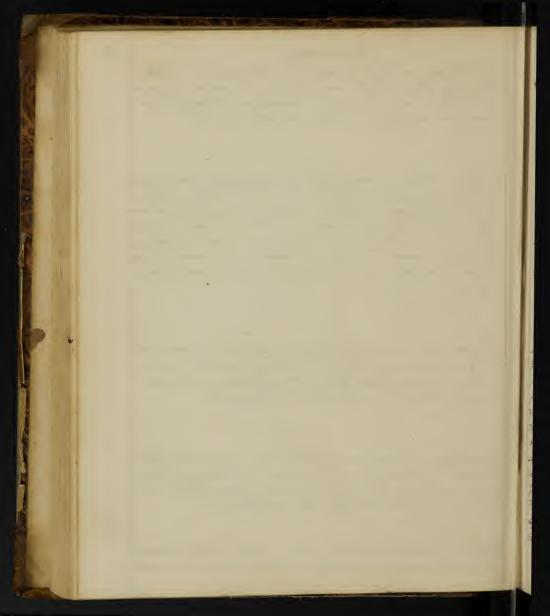
Harceny, or theft, I kinds: I . Simple D: Mixel. -Simple, is Itain theft, unaccompanies with any aggravation. Mixed, or compounded, includes in it the aggravation of taking from one's house, or person. 47th. 229, 176am. 134.

I Simple: "Simple larcery is the felorious taking of carrying array of the personal goods of another 47th 229. If the goods are above the value of 12 sence, the offence is grand larcery. If of that value only, or under it, it is petit larcery. It. 18 had 573-4 Dist. 191.2 Box. 435. 18 Carry 134.145. — For Grose I in delivering the obinion of the court, Beach 1089; "Garcon, is the florious taking of the goods of another, without his consent say! his will, with intent to convert them to the use of the taker."

If goods above the value of 12 pence are stolen by several, each quilty of grand larceny. 186 arr. 145. Etealing under the value of 12 sence, at several times, from the same person - not grand. 186 arr. 145. n. Seach 255. Cont. 18 ad. 581. 2 Heb. 70. old.

The difference between grand, & petit, is the value of the goods:-Hence the rules laid down with respect to the nature of simple larceny in general, apply to both grand & Lette I 191 229 186 am 145. Fost 78. In punishment, they differ assentially. Ind.

"Taking" Gen. Tule, that every felong sludes a treds: Hence, if the party is quilty of no trespass, in taking, he cannot , according



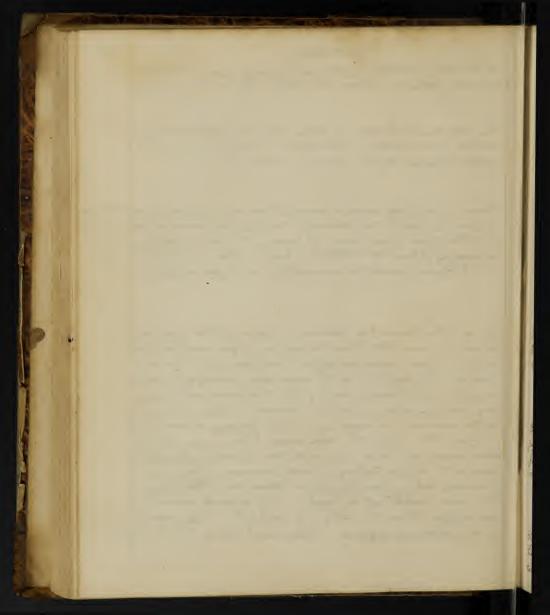
Sarceny.

to the rule, be quitty of felong, in Carrying array 2 M. V. 586. * 2 Bac 472. Hely 2 + 81. 186 arr. 184 478 (23). Du. at this time? infra.

The goods must, therefore, be taken from the poff to of the owner, actual, or constructive. I Harr. 352. n. a constructive soft is a right of present poff ? 19.72.480.496.489, 796.9.

Honce if one finds goods, o converts them animo furanci; not + The take larceny - no trest + co, generally, one posse seed under a delizing is per eny of the owner, is not quilty of larceny, it is faid, by afternances see, larve embesseling 2 Bac. 472-3.4 Bh. 230. 1 Inst. 103. 1 Ham 134-5. 1 Hood. 304. ful) be. A carrier of goods who converts of - a tailor, of cloth of

In ag to the cases sup. of delivery to a tailor of. For lately holder, ag a general rule, that when the delivery is for a certain special purpose, - owner having a right to countermand the selvery, "Leach 142), the pop " is in the owner; ergo, embezzling, anviso purandi, is a felonious taking: Et. a matchmaker, embezz ling, animo furandi, a match, delivered to clean O.Baily. 170. clothes, delivered to be masked (013.1758) quineas, delivered to be changed (013.1778. of.) - In these cases, a freewing intent to steal, seeing not to be supposed: But the constructive pops? being in the owner, taking of with Lelonious intent, is a felonious taking from the owner. 176am. 135-5. (The taking in these cases, would not be tress.) - Elo. of goods, delivered for safe custody, 176am. 150. n. Hely. 8: 2. Coops. 294-5. - Qu. Ergo, as to the general rule suppose.



Darcery. 15. If one obtains a delivery with intent to steal, & carries away or em = loggles; it is larceny: go, by the ancient rule. Ex. Obtaining a bill of exchange, under presence of discounting, but with intent to steel, of then converting it 1. 186am 135 n. 137. Seach 260.213.231.291.355-6. 95. Hely 81-2 Thor \$ 0,57. 2 Bac. 473. 3 Inst. 108. "Hal. 63. 1 Six 254. 2 MeN 379 of - In fram: dem legis, of which he can take no advantage: Top?", in law, romains in the owner. (For the felomous intent, it is fair, entinguishes the contract, or permission). Ergs, the owner retains poss, in law Hely 3. 176an 135. n. For

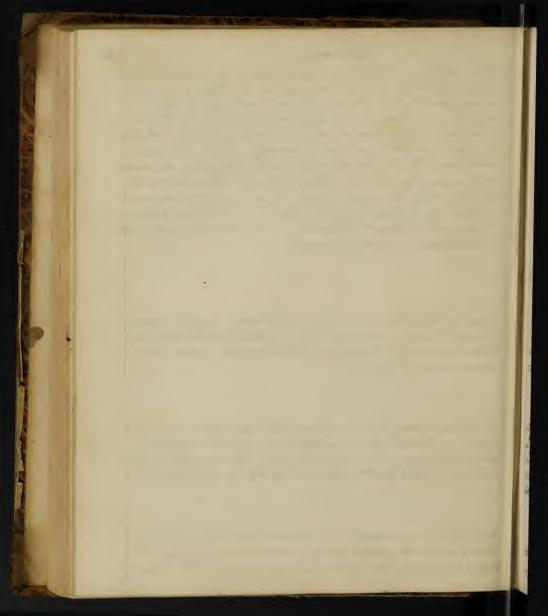
the taker shorn his original intent to have been, not to take on the contract but to Steal. Ray 275-5. Hely 8-2. What need is there of considering the contract chinquisher, where there is, otherwise, a right

to countermand, or, constructive poss")

Secus, of the pretence were to buy, + the property was fold + delivered. Home, both the actual, + constructive, pof " is parties with Clearly 95. 358, 401.
Vindows right of pof " transferred, by the terms of the contract: Aliter, in the above cases of bailment.

To obtaining goods from an officer with intent to feed under a replease, or by sixtue of an execution, on a judgment obtained by fraud on the court of, - is a felonious taking: For the replevin, o judge ment are void. 2 Bac 473. 3 Inst. 108. Rely. 143. Ray. 276. 176 ar. 186-71

Grems clear even according to the older authorities, that if a carrier, having carried the goods to the place, takes them animo hurardi, the taking is felonious, the no felonious intent, originally; for the bailment is



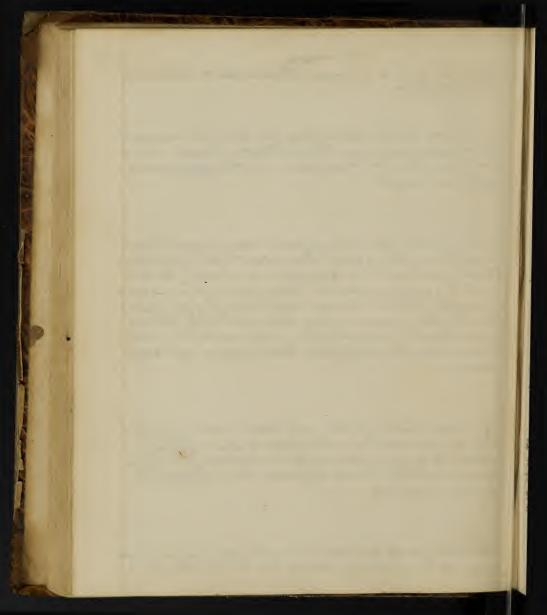
Sarceny. determines; orgo he is a stranger. 118barr. 136. 3 Gast. 107. 18bal. 508. 2/Bac. 475. Hely. 83. 475l. 230.

So, if he takes them to a different place from that of their destination , then embezgles, animo furandi. Rely. 81-2. 116al. 504-5. 8 Mals. 518. So, in the case of hiring. Leach . 358. Same heason - i.e. by the breach of trust, his job "becomes mongful.

To, I a carrier opens a bale of goods, & takes away fort; or pierces a cask, of it is belonious taking. I Had sov. East. F.C. 698. 4 Mad 580. 19ick 37t. (Because, as some say, he has no property in the goods (Du); the has in the thing containing & Bac. 473. It. says, because the animus furanti is manifest. 471.2302 Hom. says, because the polo of fart, distinct from the whole, is gained by wrong. 18 barr. 135.2 MeV. 577.) The true reason feems to be, that the forth is, in lam, all the time, in the bailor, or owner. Hely. 83. Seach. 242. There is, always, a right to countermand.

If one selly a horse to another, I the latter, on delivery, immediately rides away with him, with vendor's consent; no larceny, whatever the original witent might be: absolute pop " in stender. Leach 401. 2 MeV. & 92. Vendor has parted with his right of pops." It is only a fraud. 7.04.

Sais, that if a lety B. a horse, & B. with intent to convert of vides array with him; not larceny (Because both the poff to the right of



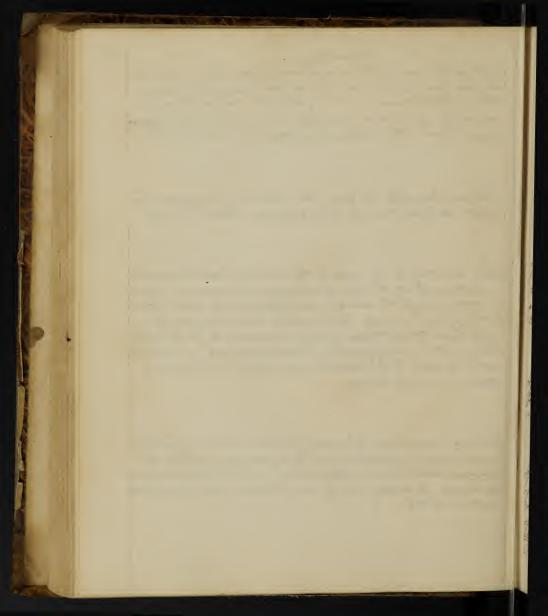
Sarceny

ring that term, he has no right to countermans the delivery. 70:18 g. 2 Mer. 892. Seach 213.358.401.) 474.230.176al. 534. 76 ere, the original hiring must be bona fide, & the intent to feal, Julie quent. Seach. 258. - Secus, it is larceny. 7.05. Seach. 219.35t.

Subbose, that, after the time, for which the hiring was, has extired, the hiring converts, animo furandi. Leach. 358, + 2u.

Ethere, according to the terms of the bailment, bailor has no right to countermans, at the time of conversion, the conversion cannot be larceny; unless the delivery may obtained with intent to Iteal. Ex. Horse hires, bona fide, for a month, converted, animosfini a work. Leach . 958: 2 Secus, if bailor, according to the terms of had a right to countermand: Construction posses in last case, not in the first. I. I bailment was obtained with intent to steal, it is always larceny.

The bare non-delivery of goods, by bailed to bailor, when the former is bound to redeliver, is both of course, evidence of a "elonious intent, even in those cases, in which converting animo furandi, is larceny: for it may happen from various other causes. 4 W. 230.



Carcing.

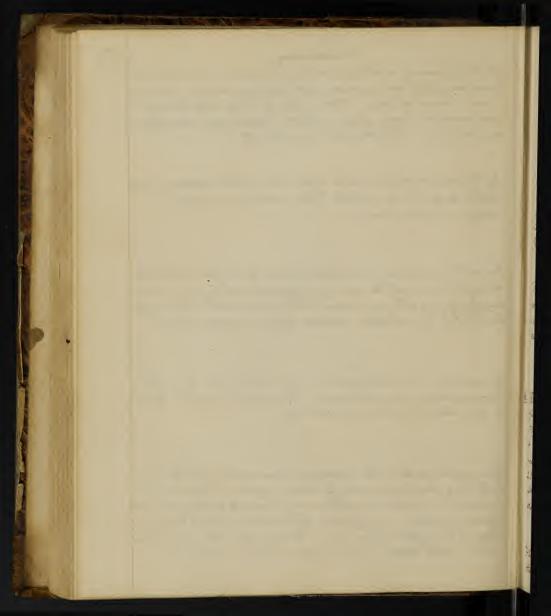
At C.S. [according to the ancient rule] if a servent rung away with yordy, committed to his custody, - not a felonious taking - mere civil wrong - breach of trast. Non by fat. D. 76. VIII, it his larceny of the goods are of the value of 40] - except in apprentices, + servants, in=der 18.474. 230-1.176al. 304. 230ac. 474.176am. 59. 138.

In. Why does not the case come within that of the watosmaker (\$63) I des du. as to the rule at C.S. Has not the law undergone a change, in modern times?

But at C.S. + according to the older opinions, if the Gernant had not the posts, but merely the care & oversight of, running away with, or emberyling, is a febrious taking. 4781-231. 176al 505-5. 176ar. 136 Me. 245. Toph & Ex. a Shephers, a Stutler: posts in master. Hely. 35.

If goods stolen, are stolen from the thief, the 2 taker is guilty of a felonious taking from the owner for the props, & popon in law, are in him 1 Hear. 130-7. 2 Bac. 473. 2 SM 21. 389.

of one steads goods in the county of a. + carries then note the county of B. + carries then note the county of B. + county of the is guilty of a felonious taking, both in a. + B. + may be prosecuted in either county: For every momenty continuance of the offence of taking, is a resettlion of t. 176am 136-7. Root og. 2 Bac 473. Stead of the original taking be in a foreign state. 176am 137. Isolang. 417-9. - Rates Contra, in cont. + mafs. 1 Map. 116. 3 Cont. R. 185.



Sarceny

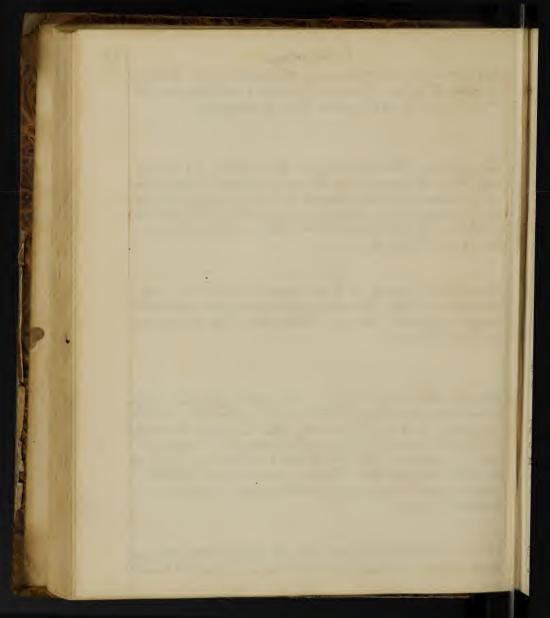
It is not larceny to receive goods, chandestinely from the rife of the owner bleach 49. - Because her taking is not felonious. The cannot be quilty, as principal: Ergs, no accepany.

"Carrying array". The least removal from the place is a carrying array (this he afterwards, leave them, or is detected). Ex Ceading a horse out of the close, he is apprehended. So, carrying goods down stains only- seo, taking out of a trunk, or laying them on the floor of The. 25 Post 108-9. 136am, 140. 2 Tent. 215. 1666. 508. Nely. 31. 2 Bac. 474. Fost 108. 2(NEV. 392, se.

Raising a bale of goods, on its end, not a carrying array - not removed from the stoot. But removing from one end to the other, of a maggion sufficient. 17 Carr. 141. n. Leach. 229. - Case of diamondo carring II. steach. 29%.

"Felonions." The taking & carrying array must be felonions i. e amino furanci (Hence three manting understanding are execused. for are more trestrapers.) - b. a servant privately takes his master's horse to ride, + returns him; 20 taking one's blough of method leave, & using it, + returning it. 471.232. Heal. 309. Intent to be discovered by jung 471. 232. East \$6.085. Heal. 504. — Usual evidence of Juck intent, is straining secrecy & concertment. with a purpose to convert to to defraud the owner.

Whenever one takes personal goods, from the pops of another agt his will, the law foresumes a felorious intent, till the contrary appears \$.02. Seach 200.



Ferroral goods of Things real, or sarchining of the realty, are not the subjects of larceny. Land cannot, in its nature, be taken of

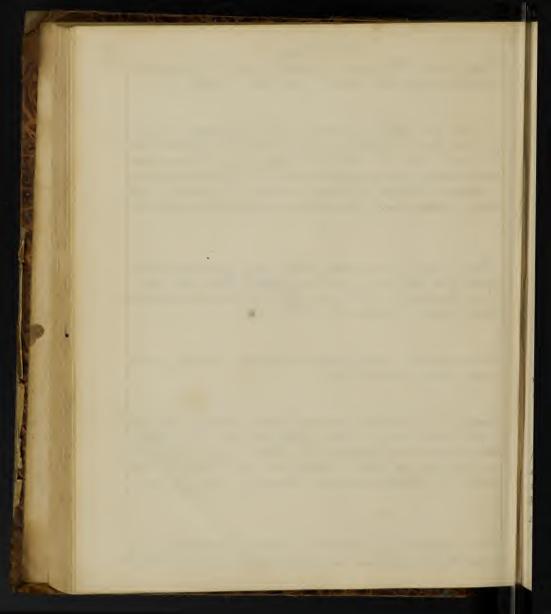
And com, grals, apples, of growing, or before severance, are not mithin the lair, as they askere to the freehold . 47H 232 Seach 208.2 Bac. 470. Went. 18% Hearn 941. 1 Mod Sg. 18bal 50g-12. i.e. if they are swere t carried away by one continued act; for then, they never were, as moveables, in the pop? of the owner, actual, or constructive. made larceny in many cases by feat 24 900: II. 47H. 233. & Bac 470. 18Carr. 142.

Seens, if severed, at one time, o taken away, at another, whether severed by the thief, or the owner, or any person. Here, when taken, they are personal, + in the owners pops? 479. 233. 3 drat. 129. 176al, 510. 1 Har. 141.2 Boc. 470. 1 Vent. 189.

Baking wood from a living sheep, or milk from a cor, anims of is larcen, Seach. 181. Delletr. 393.

Reason for the distinction between personal chattels, o things fixed to the freehold, may be: Bhat, as the latter are not so easily taken , + removed, not as liable to be stolen - ergo, do severe lans not nece pary as to them. 176ar. 142. Lee 4 191. 232-3. 2 Bac. 49-70. _ Different reason: Generally, not so valuable.

Taking charters of and, cannot be larcery, it is said, because they relate to the realty, are muniments of the freehold, I descend to

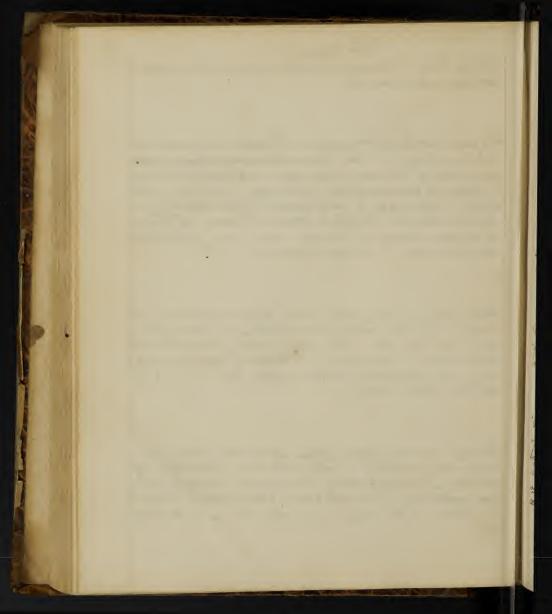


the Ger. 2 Bac. 470. 8 Inst. 109. 17608. 56.370. 4791 234. Str. 1137. Leach. 13. But trover will be for them.

The goods must be of some value, in themselves, + some one must have some property in them. Hornce, the taking of choses in action cannot, at C. L. be larceny - of no value, intrinsically, but merely by relation to something else, viz. the right, of which they are the evidence - this right lis not property in plofe 474.254.86. 33.a. 1 Han. 142. 2 Bac 478. (1 Had. 6 F. cont. DBac. 470- Thecause they answer the burpose of money, at the camp) - made larcony by that I dest 2Bac. 470.1 Ham. 142. L. No Such stat here.

Jaking animals, Serae natural, & not tamed, or confined, cannot be larceny at C. L. tho of intrindic value. Ex Deer in a gorest- fish in an open river mild ford, in their natural state of 478 235. First 366. 18al. 511. 2 Bac. 471. 176an. 143-4. Secus. of reclaimed, or confined, 4 may some for foods. Ex deer in a park - fish in a trunk of 4M. 1235-6. 1 Had. 511. 2 Bl. 393.

But such animaly, feral natural, as will not ferre for food, are generally, deemed of no value, in the law, on this subject: Engo, the redamment or confined, taking them cannot be larceny at C.L. Ex. Freg, markeys, bears, of 1 Ham. 143. 2 Bac 471. 3 Inst. 109. 176al 612 271. 398. 48/2. 335 - Let even in these cases, a civil action will be for the taking 471235.



Larceny.

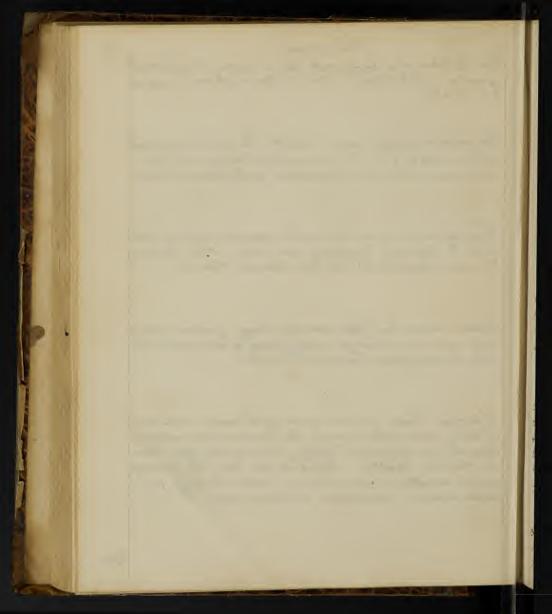
But the taking of a hank tame, may be larceny it is fait, at C.E., as well as by setat. 37 Eam. III. 2 Bac. 47 K 1 Ham. 143. 3 Drat. 109. - Du. at C. S. 47K. 256.

But domestic animals may be valuable, this not serving for ford; as choses, mules, of & therefore, are subjects of larceny. So, those which as serve for food - as near cattle - poultry some, of 438 236.

Tome domestic animals not deemed valuable, in the law on this Subject. Ex. Dogs, cato; Ergo, taking, not larceny, at C.L., tho it may be a civil treep. 4181. 235. 294. 293. DBac. 471. 176am. 149. 93

Under a certain Eng! Stat., excluding clergy in certain cases of "arods, mares + merchandize" stoler, money is holder not to fall within the description. Seach. 48. 5 of. 234. 403.

Manother": Goods, of which no one is the owner, at the time of taking, not subjects of larceny. Ex. Treasure trove, mails, of before they are surged by the persons having the right, I Hoar. 144. 176al. 512. 1781. 295-17. - Here, at the Stime, the property is in dubio, or rather in no one. It may become the Kings, or, in certain events be revested in the former owner.



Larceny.

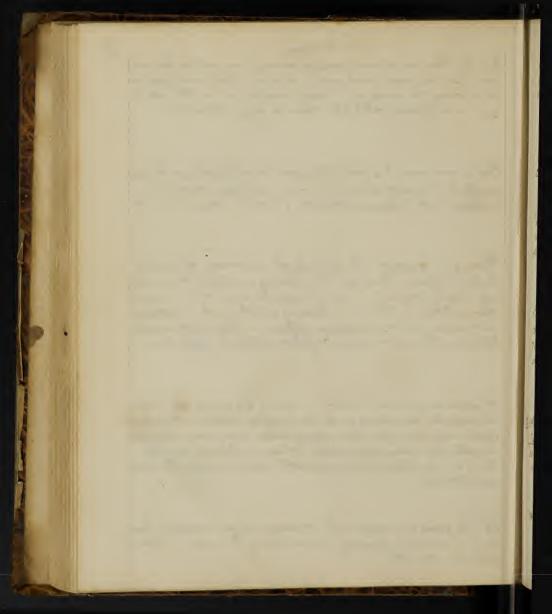
But, the there must be a proporty on some one, at the time, yet, said, that the owner need not be known, I that indictment lies for steading the goods of a person unknown i.e. the indictment is sufficient. 4781. 235:176am. 144. Dy. gg. 176al 572

But, in such case; it is faid (2 Had 290.8 mod. 249) that, at the trial, unless the property is proved to be in a stranger, it shall be precumed in the prisoner. I Had 290. 2 M. N. 500. 186am. 145 n. 352.

Stealing the goods of a parish church is larceny the goods of the pahishioners. 176 am. 145. It , stealing a shoots from a dead body, it is the property of him, who was the owner, when it was puton. 176 am. 145. 30 nst. 110. 12 Co. 113. - Stealing or taking up a dead tody, not larceny, but an indictable offence - a high misdemess how. 29.72.733. Gunishable, in some of these states, by Jeat. lar.

A person man commit larceny by taking his own goods, in certain cases. En One delivers group to a carrier tailor or other bailes, + afterwards secretly + franchelently takes them away, with intent to make the bailer answerable. I Hoar. 145. I shot. 116. Cro. E. 530. So, if he got his own me penger, with intent to change the hundered 474. 231.

If A's goods are vailed to B. it seems, that one stealing them, may be inducted, generally as for taking BD goods. 1176 am. 145. Hely 39. 013.1785.



Sarceny.

On an industrient for larceny, if a Gelonious taking is not found, the court cannot, on a special finding, give judget agt deft for a tresp. Hely 29. Seach 17. The two offeness are generically different.

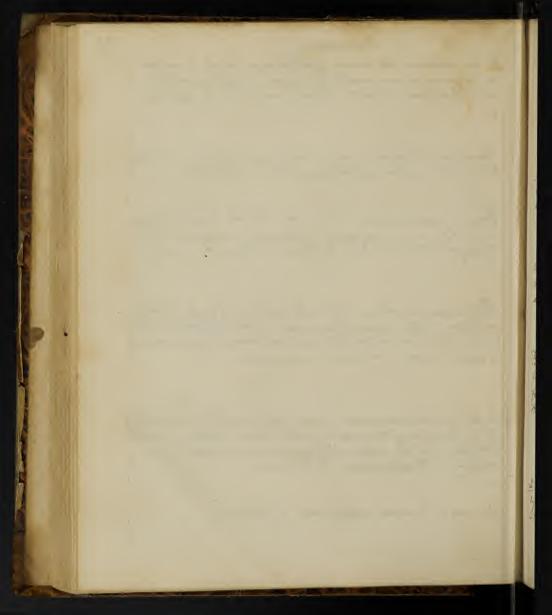
Tunishment: Simple larcon, whether grand, or petit, is a C. L. Gelong. IBac. 475. 146al. 09. 146ar. 145.478l. 95-7. 2 Wils. 19. 1 Me N. 208.

Grand is a capital felony at C. S. but mittin the benefit of clong; which homever, in many cases, is taken among by state; as in horse stealing of 478.237-8. 1 Weal. 12. 8 Inst. 53. 2 Har. 49. - money.

Petit larcony Sunished, at C.L., mith forfeiture of goods 3 chattels, 4 whipping, or other corporal Journishment (17 Car. 145. 3 Inst 218. 176al. 70.530. 478.237. 45-7. 2 Bac. 476.) - not forfeiture of lands, not being a capital felony - + of course, no attainder.

17. In Cont no distinction between grand, a Letit, larceny: Time, not exceeding 11 + of the value of the goods amounts to \$3.34. In hipbed, not exceeding 10 stribes - If of the value of 84 cents, or more, a under \$3.84. no whilebeing - Treble damages to the owner.

In many of the states, states prison or Gententiary



Sarceny.

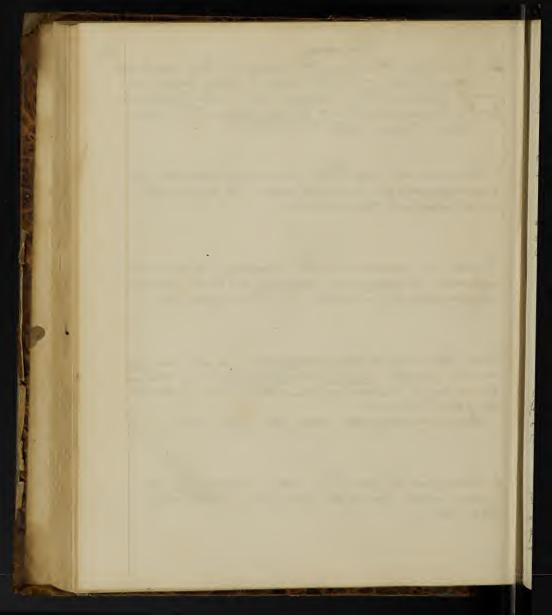
Shired Larceny: This has all the properties of finishe engo the ruley laid down as to finishe, will apply to this: It always, therefore, in = volves the felonious taking of carrying away of anothers Dersonal goods. But it is also accompanied mith the aggravation of taking from ones house, or person, or both. It the aggravation of taking from ones house, or person, or both. It the 239.176am. 137.

1. Larceny from the house: This, the more aggravated, than finishe, is not distinguished from it, at C.S. either in its general nature, or kind of Buhishment. I Heam. 151. 478. 239-40.

If indeed, it is accombanied with a breaking of the house, in the might season, it differs most essentially; but it then fally under a different description 4 PM. 240. — It is then burglang, \$35.

But by fate in Eng. the benal consequences, of mined larcen, differ from these of simble, in general: Benefit of clergy being taken army from the former, in almost all cases. 4731 Oct. 176 arr. 157.176 al. 508.1 Hely. 31. Fost. 78. Leach. 310.

2. Larceny from the Berson This is either by stealing Torrivately, or by soin, it violent, a pault the latter offence is called robbery.



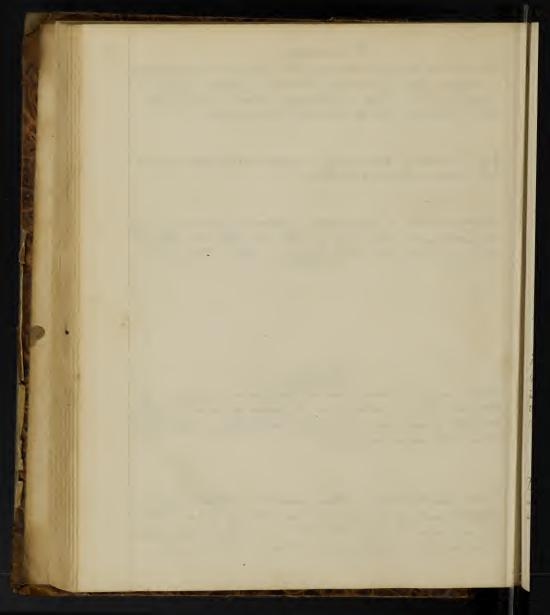
The offence of privately stealing from the person (as by booked buching) is a felony at C. S. > it of above the value of 12 perce, capital - but clergyable at C. S. Olergy is taken away, however, by stat. 8 Clip. 478. Dr. 140am. 150. 176al. 521. Cleach. 238.2 me 1.391. 16

of of the value of 12 pence only, or under, not capital, at C.L. 4741. 241 Prost. 93. 2 Hal. 305. 176am 151.

Inflerence, then, in punishment, between sinkle larceny opinionately stealing from the person, is, that in the latter case, clergy is taken array, if alone the value of 10 pence. Alter, in the former.

Open, o redent larceny from the person, or robbery, is the folonious & forcible taking, from the person of another, of goods, or money of any value, by violence, or putting in year 474.040 176ar. 1472 value immaterial.

"Taking from the Berson" of There must be an actual taking - an attempt to ort, not felony at 2. L. Aid 1 Hal. \$32. 3 hat. 09. (the formerly, holder to be so, 478. 242! - It is a high misdemesnor incurring fine & improvioument. Ham 148. 478. 242 = 13ut,

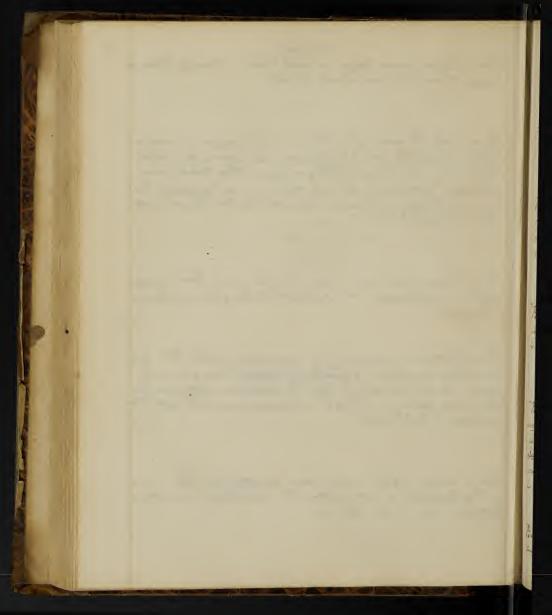


If one takes the goods of another, in his presence, by violence of mutting in fear (the not leterally from his person), it is within the definition. Ex. First putting in fear of their taking among ones horse, standing by him or driving among his cattle, which are in his presence. I & Gar. 148.176 al. 533. Glal. 673. For, 155. Carth. 145. 471. 242. 22N. CV. 59.4-6.

To, if having put me in fear, the takes goods from my sers rant, in my foresence, it is a forcible taking from my floreson. 176 am 148.

HE, who receives my money of by my delivery, while I am inder terror from his aboutt, is quilty of the forcitle taking from my herson. So, if by putting in feler, he extorts an odth from me that I will deliver it, I do it, in pursuance of the oath. 17 bar. 147. I chat. 58. 2 NOV. 594.

But a taking, which is not either directly from the owner, or in his presence, is not within the definition - no rolling, 4M. 244. Com. P. 478. Etr. 1015.



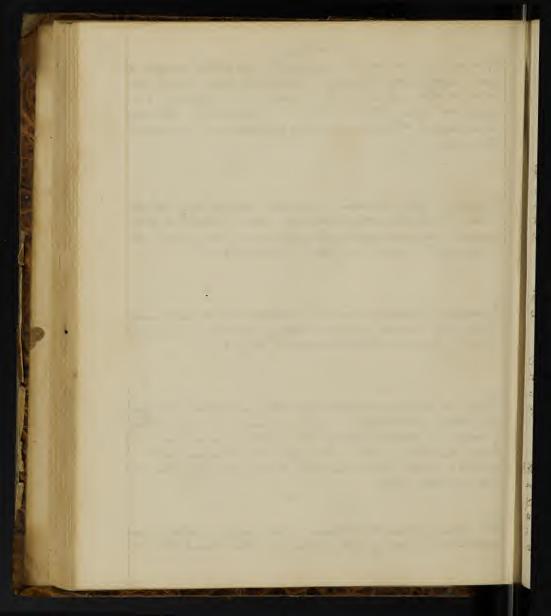
of several join to rot of A missing him, one of them goes from the rest & without their knowledge, I out of their sight cross B. & then returns to them; all are guilty - because of the intent to rot & to assist each other. 18 Car 148. Had. 533-4-7. 2 m Vr. 536. — Que unless they collected for the purpose of rolling any person who might jall in their may?

Bidelivery, after the taking a complete, does not purge the offerer of taking it is still robberg 4Pd. 242. Have, 147. 3 Does 1.0-9-for the definition does not require the continuance of the goods in the robbers proper Seach 224. 176al. 533. 2 mg r 3 g4-5.

"By violence or putting in fear". The contenior which distinguishes rolleng from all other larcenes: - Without to, there can be no nobberg. 4TH 242. 1 Han. 148. n. 2 96. 494. 3 Jast. 58. "Kely 69-70.

"Tiderce" on this case denotes more than is insplied in the mere act of taking, which itself is violence in judgment of lam & Phone is violence in pocket picking: But robbery requires more. It denotes violence of some kind, offered to the person but it ought to be such, as is calculated to exert fear fent Ham/49 n. 471.243. Frost. 128-9.

But actual violence to the person, is not necessary - putting in fear sufficient. Ex. Pase of onthe extented of \$7.76. Did + Seach 263-4.217.



The violence, or butting in fear Domest be brening, at least must not be subsequent. E. I fore steady friently from the person, & afterwards keeps it by putting in fear, it is no robbery.

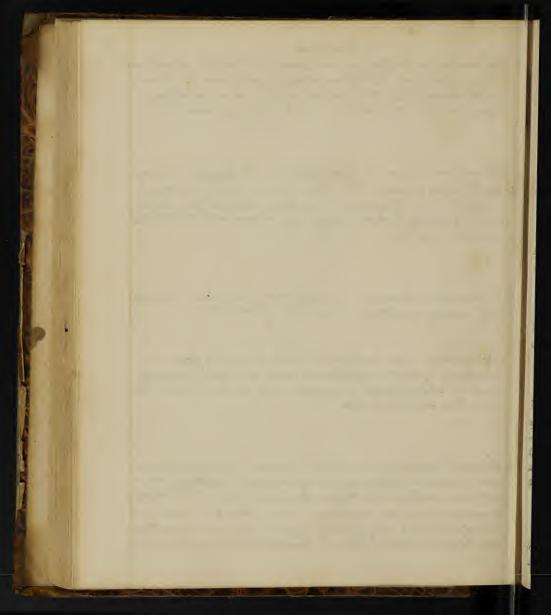
186an. 148. a. 2 Rol. 7: 154. 176al. 534-5. I taking of, by violence of.

The violence of must be professedly for the burbose of obtaining the money of taken. For where several, finding one drunk, + under foretince of carrying him home, dragged him, kicked him of + privately took his money no rolleng. 2 m W. 197. 176am. 148. n. O.B. 1784. p. 797.

Handcuffing a presoner to extert money from him, o then ac = trally exterting is rothery. Leach 200. 2 mer. 197.

As to putting in fear, sufficient that so much force, or threatening by word or gesture is used, as might naturally create an apprehension of anger to the Serson. 473.243.186am.

I So such threatening, as is likely, according to common experience, to excite an apprehension of danger to one's character or good name, sufficient patting in fear. 17 time 49. n. En. Threatening to accuse the of an unnatural crime. It its. 178-7. 296.1780. 7.542. 21k V. 598-9. - Thy all the judges of Eng. 20 holden. Fost. 129. Leach. 199.25%. - Fear of personal violence not necessary.



Begging, with a drawn swood of sufficient for putting in fear So, forcise by extorting money from another, under pretence of a sale 4741.243.176am. Thy. 176al. 533-4. Leach. 204. D. M. N. 537.

144). 186al. 235-4. Qever. Qeve. 2 1271. 39 j.

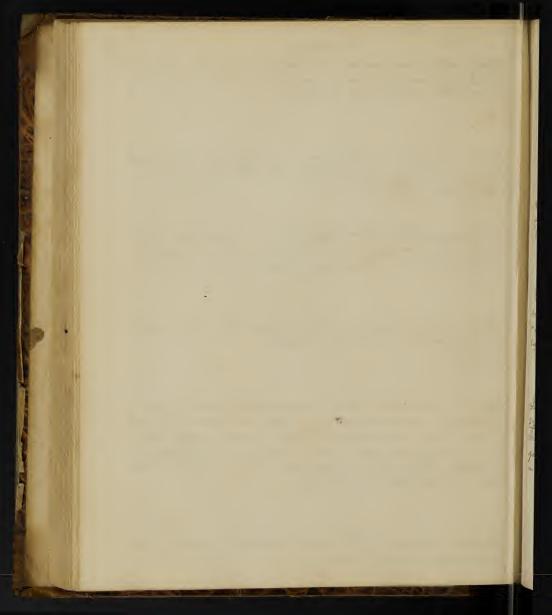
Whether compelling a market woman, or any higgler, by violence of to sell hergoods, for the full value, is robbery, delt. fint not no felonious intent. 176am. 149.4731. 243.

The Farzease Kely 43. That taking goods under legal process, without color of right, & with intent to rol, is rolling in fraudem legis for 2. where is the fear? or sufficient cause of first? Exarceny it may be.

"Fulling in fear, not nece fram in the indictment "By violence", suffice - ient. 478. 243. 176 am. 149. n. Kely. 70. Leach. 204.

When the offence is law to have been committed, by Butting in fear,"
not necessary to prove actual fear. Such circumstances of violence
or such threats, is are calculated, & likely, to exert it, sufficient.
Ge. One knocks another down, without marning, + stribs him, while
senselefs. Nobberry, the no actual fear 47th 243. 176al 532. 176am. 189.
Post 28. Level 264-5. 203. 2 MeN. 598.

A claim of Footserty, in the goods taken, without am, colour of right is me excuse. I Hair. 149. 18 Cale. 309.

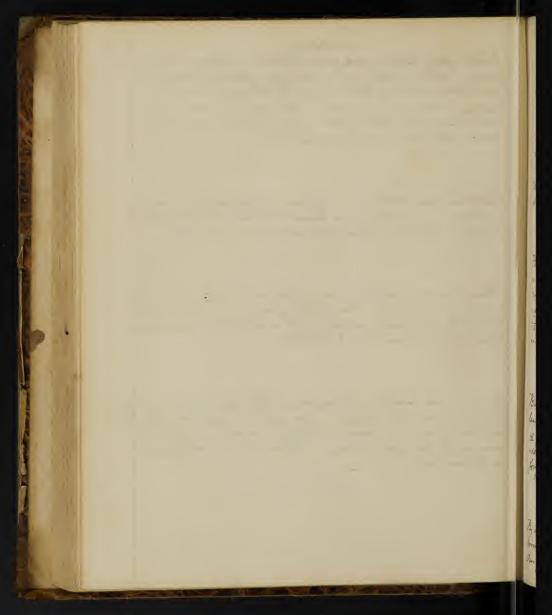


Whether openly taking goods from the person, without violence, or putting in fear, is follow, of any kind, dub. According to Hoan it is not. 186am 150. Des vid. 18t. n. 149. n. - Et. Snatching a Lat from ones chead, a running away with it. Ray 275-6. Deg. 224. It does not, strictly fall under auther of the divisions of larceny from the person. 2 Not. 154: Hely. 43.70. 18 id. 254. Seach 264.

Indictment for rolling on a highway, not supported by evidence of a robbery in a dwelling house Leach 53 & Ham 495 QUREN. 899. "Highway," in this case, its part of the description of the office.

Funishment: A capital felomy (whatever the value of the goods) but clergy able at E.S. Nor, ousted of clergy by Gtal 23.46. VIII + 3.4 71.0 m, ergo, death in Eng. - both in principals, & acceptones before the fact. 1 Hoar. 149-50. h. 2181. 243.

In Cont, like bringlang: Verngate for first offence, not exceeding 3 years of if a male - Genale in Com good or workhouse - of \$51. with sersonal abuse, force, or violence - or, so armed of nema gate for life, for first offence. - What Toine of robberg is meant in the first case



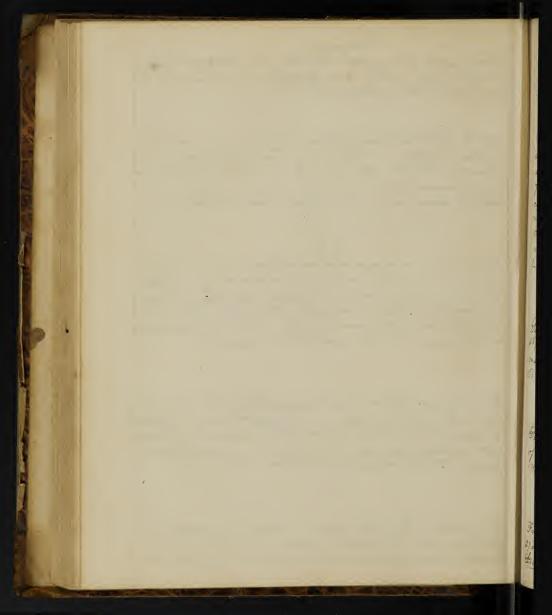
Forgery, or the Crimen false, at C.S. is the fraudulent making or alloring of a ventury, to the prejudice of another right. 478. 247. 176am 355-210-12. 613 ac. 500

Records, - other authentic writings of a public nature, as parish registers, of aceds, out feems, wills, are subjects of forgery at C.S. 146am 335=8.2 Bac 568. 1780l. 80-5-8.76. 3 mod. 86. Cotr. 69. 178ay. 81. No. 160. — No decision at C.S. as to a will. 146am. 338. - but it is now a subject of forgery at any rate by that & Eso: II. 186am. 210.

But according to a great number of openions, the making, or allering of any private vonitings, of a nature inferior to deed a mills, is not forgery at C. S. B. Notes, orders, lills of exchange of not openialties. How 385=8. DBac 508. 1 Pol. 08. 19fec. 16.157.451. Cro. E. 853. 27Bulst. 265. (And, according to fome, there is no punishment in these cases. 176ar. 338. not even for a cheat.)

But it has been holden, since "Hearting" time, that the fraudulent making of of any miting, by which another may be prejudled is forger, at C. L. T. P. P. 197. 1451. Str. 747. Barnah "10. Firant went making of of a hill of exchange, in unstamped paper, is forgery. 27. 12. 508. Seach. 246, 2 MeV. 480-5. Ets. 010.

By a variety of Engligitate, homevor, almost every species of briting is made the subject of forgery 274. 24 for 176ar. 330. Our flat includes all private writings, by the words "any other writing!



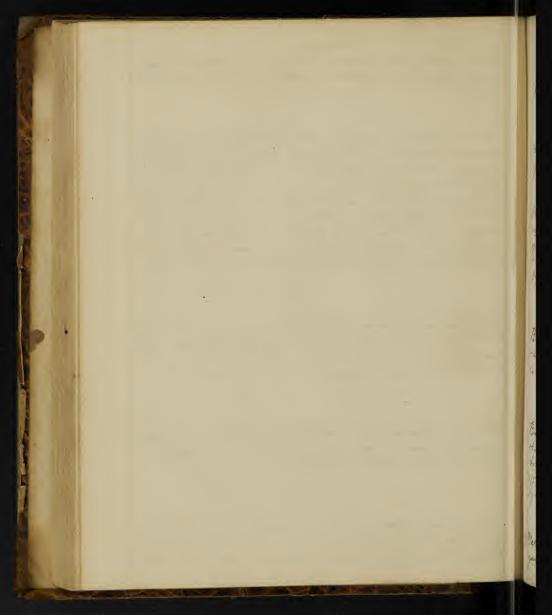
one makes a false mill, in the name of another, the forgery is complete, the the supposed testator is living. Seach. 103 3911 2 811.
N. 483.

Not only actually making a false instrument, I subscribing another's name to it - & fraudulently alterning me already, made, is forgery; but many other acts are so. I Hoar. 336. Be. One employed to write a will for a sick man, falsely of inserty lega-cies, not directed to be inserted: Horre, the name is not vorged, nor is the mriting altered - after being executed. It is 2 Bac. 874. Mo. 757. Nov. 101. 3 Inst. 170. Dy. 286.com. - Subpose the mill never executed: Not, forgery, I conceive; because there would be no complete instrument. 2 Bac. 567. Mo. 400. 176am. 334.

To, writing an obligation release, of over ones name, lound & Bac. 19. Here, the name is not forget, but the instrument is. Els, making a mark, in the name of another, may be forgery. Seach 51. The being a mode of signing, by such as cannot write.

To, if one frandulently inserts in an indictment, the name of one, agt. whom it may not found. This is an alteration of, 16am 395.3 mod. 55.8 St. 192. 12 St. 49 7- 5. 2 Bac 567.

Frandulently altering a deed, in a material part, is forgery, 11 co. 27 a. 176 am 3 %. 273 ac. 567. Mov. 619, Ex. Manor of B. for manor of A. Grot. 169. Cont. because not made in the name of



another than the true signer - + neither hand nor seal counterfeited.) But it is directly within the definition - secus, if the part is immaterial. sed vide & 85.

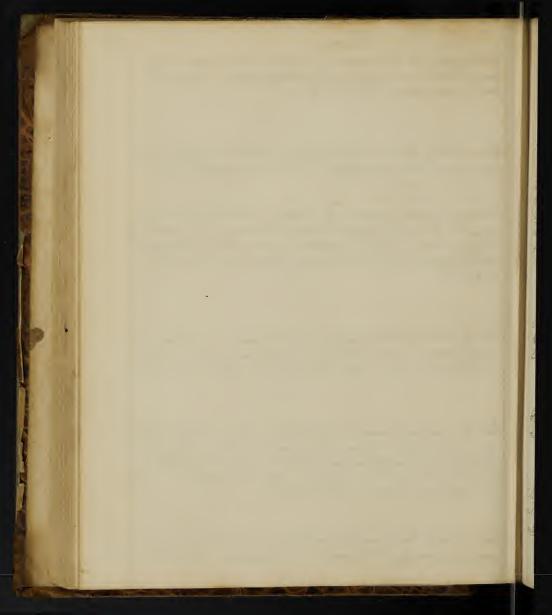
If one having found a hill of exchange, forges an indorsement, to get it discounted - it is forgery, 176 ar. 210. n. dat & & 201. Ray. 146.

One may be quilty of forgery, by making a deed himself, in his own name: Ox. One having given a deed of blackacre to A aftermary grants the Dome to 13. I antedated the deed. This is fraudulent, to the prejudice of a. 13bar. 336. Mo. 653-759. Noy. 101. 278 ac. 565. by 284. Con.

But he, who honestly writes an instrument in anothers name, taigns, I seals, it for the latter (in his presence of by his direction, is not quilty of forgery. It is the act of the latter, in law, 14bam. 337.

But the making of must be framdulent - Ergo, if oblique changes the more "pounds" into "perce", not, in general, forgery injury to himself only (misdemes nor). 176 an 307. Noy 199! mo. 635 Cal. 375. 2 Bac. 587. 2 Mer. 637. 1 Root. 94. But the security is avoided by it. 176 an. 387. Esp 224. 110. 25. 1 Root, 94.

19 Wet it is said, that even this alteration, if made with a mento gain an advantage to himself, or to prejudice a third bearn, would



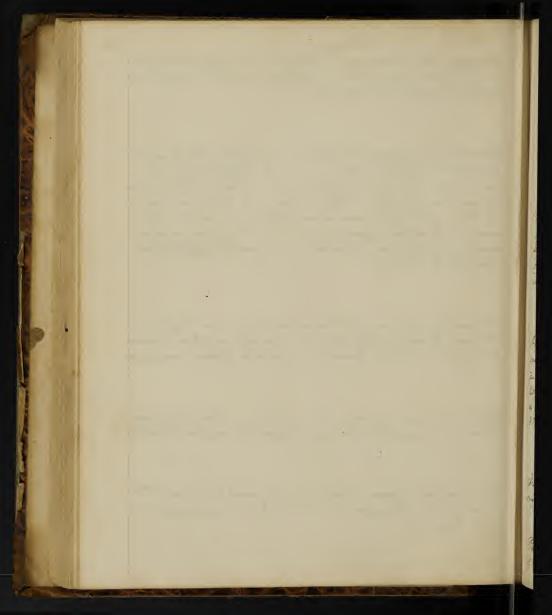
be forgery. I Harr 337. 21 Bac. 507 Ex 10 Bliger bound to a fright the obligation to a fright the obligation to defraud the creditor, by rendering the deer was.

Regularly, a non feasurce cannot amount to forgery, the the intent be franchiled. Ex. Imitting a legacy in a will of forgery being positive. But it is sais, that if the onificion of one bequest, materially alters the limitation of another, it may be longery. Ex. Imitting an estate for ite its one, whereby the denise of an intenses remainder to another, is made to take effect, in presenting for here the omission operates in favour of the latter, as a positive denise for the life of the former. I Can. 33%. (No. 700. Noy. 10).

Not rece pary that one should be actually prejudice: Justicent, that from the mature of the act, some ones right might be prejudiced. L. 16 797. 401-5. Etr. 747. Barnard. 10: As, where the obligation is never inforced.

Sufficient to over a general intent to defraud - without pointing out the particular mode . Ex. With intent to defraud AB sufficient. Clack, 75.

Not recepany to forgam, that the monting should be published. I'll 1401-9. For 747. - Firmalable, the the Barty keeps it in his desk, the intent being clear.



Forgery. Forgery the name of a fictition sperson may be felong Teach 83.1225.

Subpose an alteration in a part immaterial. If by obliger requestably injurious to himself only if by Gernanger, or obligor, of no effect.

11827, a. Vet of by obliger it might in some cases prejudice another.

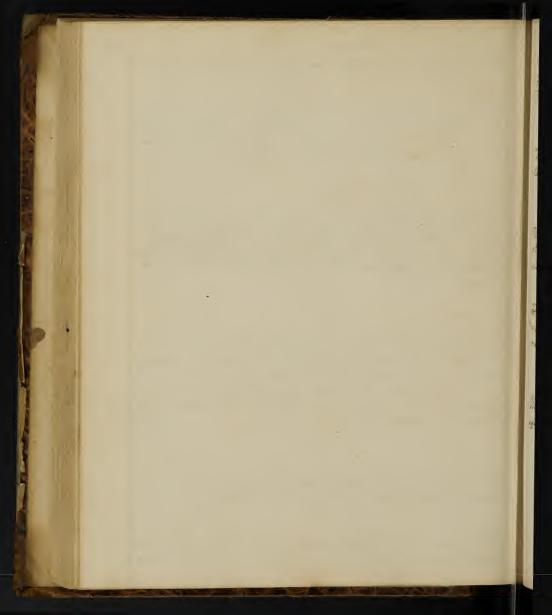
B. Mother might have the beneficial interest.

Generally, the least variance, between the writing receited other offered in evidence, is fatal. Seach 389. "Get, of a mistake in spelling does not alter the word to another not fatal. Ex. Ex. Un-dertood, for inderstood: But it is atal, of it make the words insensible. Comp.

In a prosecution for forging a venting, "purborting" to be such an instrument - deft cannot be convicted - if it asis not, on its face, purbort to be the instrument described. Doug 287. 302. ! East. 18. a. Cead 209. [as to the effect of the words "of tenor following" as follows, that is to say, "of 2 Heav. 146.198. Conf. 229. El. 172. 1575. Str. 231.787, Eld. 600. 3 Burning J. 100. Song. 23.183.

In the inductment, the forged instrument must be detout in mords of figures, ! East .. 60. n. Dong 287. 302. Seach . 209.

Funishment: at C. S. by fine inpresonment of fillow, By a variety Post o. of Ing that more severely punished in most cases with death 478. 247-50.



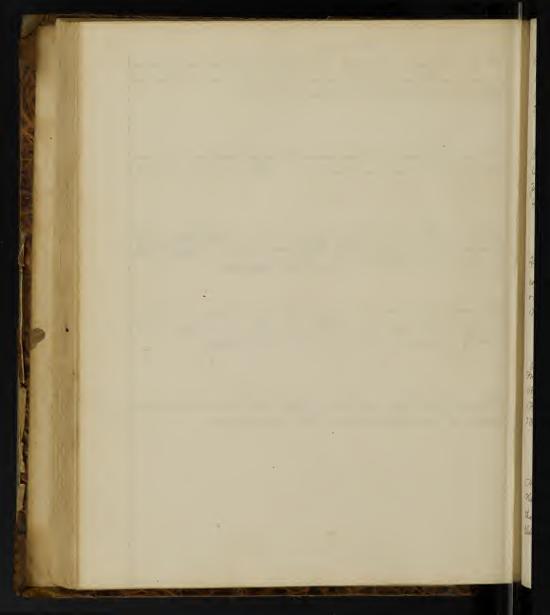
In Con nergate, for male, for the first offence, not exceeding 3 years of a to pay double damages to the party injured - to be incertable of giving rendict or evidence, in any court.

Whether the person in whose name the forged instrument is, may testify agt the prisoner, see Jak. Er. 95.115. 1 SW 21. 37. 60.105.117. 135-9.141-4.

Under our Stat. the making of of any writing is not forgery, unless to be "to prevent equity a justice." This does not seem to wary the offence, in substance from what it is under the C.S. definition.

The word "alter" not used in our stat; but "altering a miting" is "making a false miting". The form here, is to charge with making a false deed of when the act was altering.

Uttering o publishing, as true, a forges instrument, to prevent equity of, is punishes, under our stat, as forgery is.



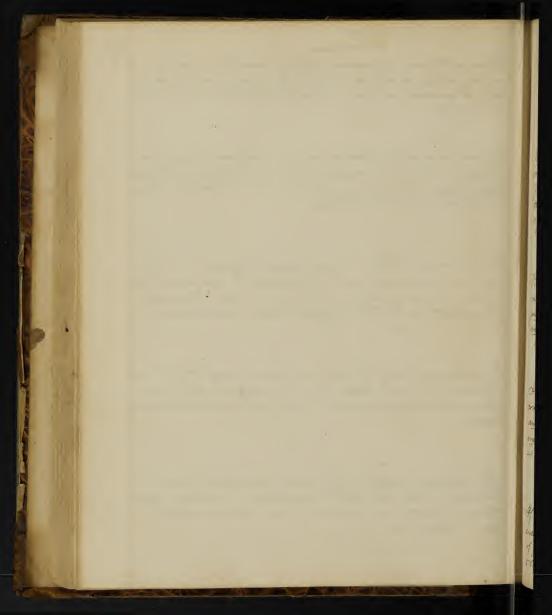
Toryung is the come of preading frilfully, absolutely, of alsely, in a matter material to the ifene, or point in question - under a lamful oath administered in some judicial proceed 4781.137, I Inst. 184.186am. 318.3 Bac. 814.

It must be a milful false screaring i.e. with some degree of de-Woration - I this ought to appear clearly: - not perjuny, of thro sur prise, mistake, or matverting, 176 and 319. 3 78 ac. 8- 5 mbo. 950. 10 St. 195. Pal. 573. O Dest. 183. 4781. 137. 21 m 21635.

The oath must be taken in Lome "judicial proceeding" - i.e. in some court, or before some officer, having authority to administeran oaths & in some proceeding, relative to a civil suit or crim! prosecution. 116am. 319. 471. 137. Cro E. 108-9. Noy. 128. 27Rol. 257-8. 86ot. 62. 378ac. 814.

Immaterial whether the court is of record, or not. 2M. 9. 470. Burr 1189. Seach. 538. Ex. Ch. 2 - Eccles! - ct in Ins. - orang other langul court. 1 Hear. 219. Oro. C. 185. 609. 907. 3 mod. 348. 17Rol. 41. 202. 257. 12 Co. 101. Cr. 1. 12. 3 Bac. 84.

Any voluntary, or extragadician, oath, not within the lame 176.137. 176an 320-1. Ex. an oath before a magistrate, on making a bargain, that the property is the vendors of 17ent. 31 -70. Con. 2 18d. 257. Yelon 72. 3 Brat. 168.



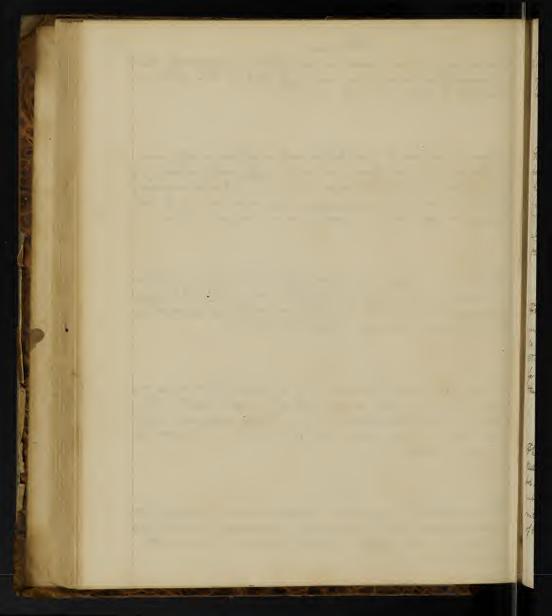
But berjung may be a bignes on an affidant, or deposition, the the affidant of is never, in any may used 79.78.315. The offence is comblete, by taking the oath.

Ferjury is confined to such Julie oaths, as affirm, or day, some matter of fact not predicable of From porthy - as oaths of of-fice. 176an. 320-1.2 Rol. 25%. 33hst. 100. 378ac. 874/ (But the violation of the latter may be a misdemesmon) 176an. 321. 2 Com. 14%. Ex Oath of a juror, or judge, or of an executive, or ministerial, officer.

But Derging is bredicable of any false oath, material to the point in question in judicial proceedings, the not affecting the principal judgment. Br. Respecting the ability of one offered ag bail of To upon any interlocutors question. I Hoan. 320. Cro. C. 146.

A party, when allowed his own oath, in judicial proceedings, may commit berjury, as well as an indifferent witness: Ex. Deft in his answer in Chan "Bull 239. 2Mc N. 470. - Farties" affidamits, on collateral points, in Courts of law book debt, in Cont - of 176 am 322. 1Rol. 40. 3 Bac. 815. 4 Com. 146-7.

If deft in Chan. Chaving given a false statement, explains it (upon exceptions taken), in his second answer, consistently mith the truth of facto; he is not quilty - mistake presumed. (Sid. 418. 2 Heb. 510. 2MN. 474;

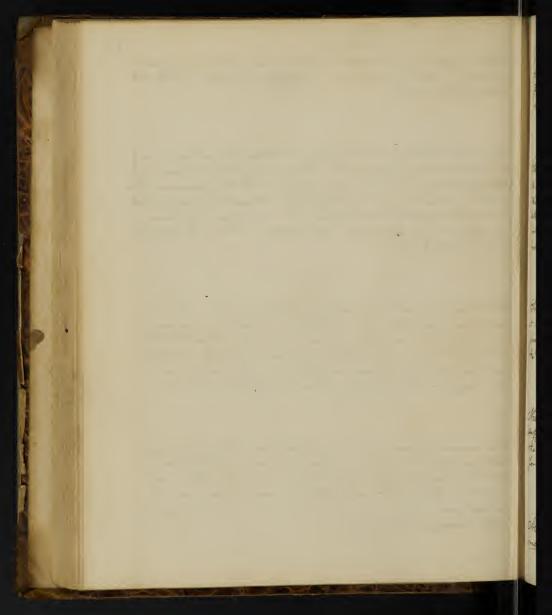


Said not, necessarily, to be material, whether the matter somme to be true, or not, in fact, if the mitness sneams that he know, what he does not know, to be true, he is perjured. For he is to snear to those facts only, which are mithin his knowledge. 186am 322. 3 Calm 3943 Rd. 17. 3 Shoot 186. 3 mod. 322. 69.72.637, 4 Com. 144. — Eleboose he snears, absolutely, to what is not true, but believing it true: Guilty of perjury? I think not.

The smearing must, it is faid, be absolute, o sirect, - Erroaning under such qualifications as, "I think," or "I believe; or "according to my recollection", cannot, it is said, be perjury. I Ham 32-3. I Dont. 107.3 Bac. 815. 40om. 147. Du. If the mitness does not think so? (Corp. 23); for it has the meight of common testimony. May not the lar be thus evaded? It is perjury. Cleach 301.274. 2.885. I NON. 262-3.

The prearing must be to a "material point". Importment + idle, testimony commot be perjury. I Ham 323-4. 3 Bac. 815. 19 d. 274. 420m. 147. Ads. 3. 3. 64. 14. Cro. E. 500. 1780l. 178. 1841. L. R. 2589. 5 mod. 345-8. _ Ext. in daily experience. The question was, whether a. was compas, or not; the mines gives a history of a journey to see a. I misre bresents some of the incidents of the journey.

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But if the false endence, the circumstantial & not directly applying to the ifene, tends to aggravate, or externate samages, it may be perjuly. Ham 323-5. 315. 1.2.2.12 Co. 101. 2 Leon. 198. 3 Bac. 815. It goes to one point in question, it is material to that Loving - viz, the foint of dame.

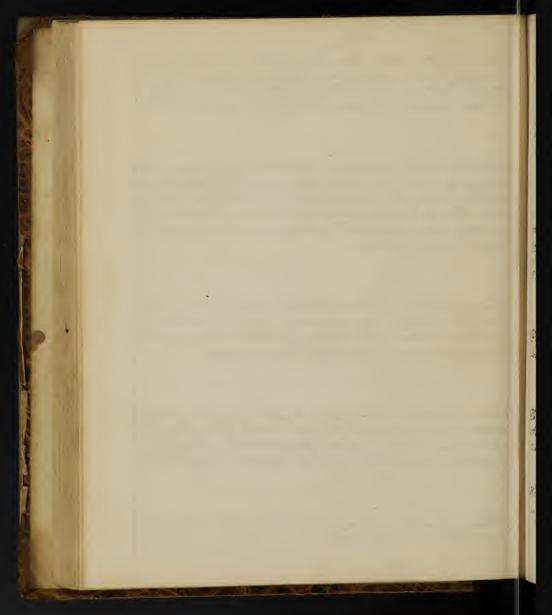
So, it is said, if the immaterial of also part of the evidence is likely to induce the jung to give a more ready credit to the Substantial part.

18am 323-4. L. Pay 258-9. Ealm. 382. 3 Pol. 72. 358. This sont, not well settled. I ham 324. Et. Falsely screaning to certain artificial or natural, marks, about stolen for of falsely brofe fring good will to the party, agt whom he screams.

Threaring that one beat another with a smoot, when, in truth, it was not a staff, - not sufficiently material, to constitute bere jung (Har : 23. I com. 147) the beating only, material. - In. may not the kind of instrument tend to aggranate of? sup.

Need not appear, in what degree the false evidence may material; sufficient, if it be circumstantially 20 - much less, necessary that the evidence be decisive of the spine. (Har 325 - n. 2. 2 25. 882) for it may be very material, + yet not sufficient to govern the finding.

Ofmany incumbent on the prosecutor to brone the evidence mate = mid. 1 Ham. 925. A. Ste 013.1784, 7. 305.



The Joatea of a former Jan D good evidence, that a trial mag has, Loag to interoduce bridence of what mag 2 non. 2 mer. 408. 835.

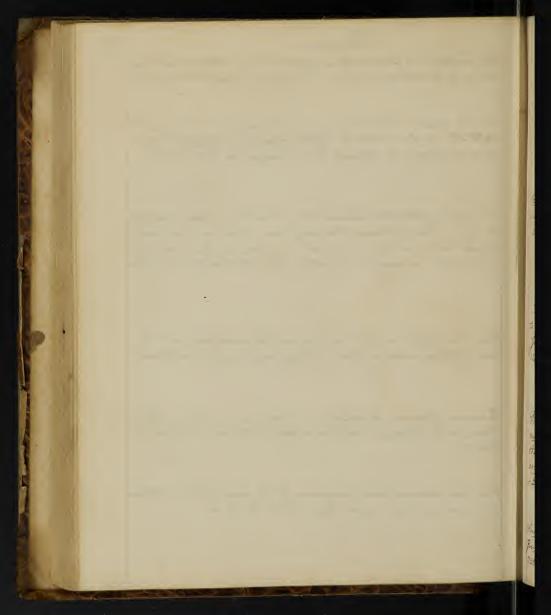
And the cause, in which perjury was committed must be set forth. 1mW. 283. Ray. 170. - How for office copies of an afficiant of on which the perjury is a prigned, are evidence, see 2 mer. 408. of

Not necessary that the false evidence should have been credited by the jurous - mor, of course, that any person should have been actually injured: The crimo does not consist in a damage done to an individual but in alusing public justice . I Ham 325. 2 Seon 211. 3 It. 230. 3 Bac. 845.

The mord "milful", is not necessary in the indictment, at 2. L. Leach. of (Stone, under our flat.) "falsely, maliciously of sufficient.

To convict of perjury, 2 witnesses, at least, are necessary. Secus, there is oath and voith. 164 am. 325. n. 10 Mod. 195. 0.73. 1784. 7.812 16 129. 27. 2 24 525.

How far circumstantial evidence of the fact of the defto have ing wien evidence a good Du. 2 mcN. 471-4.



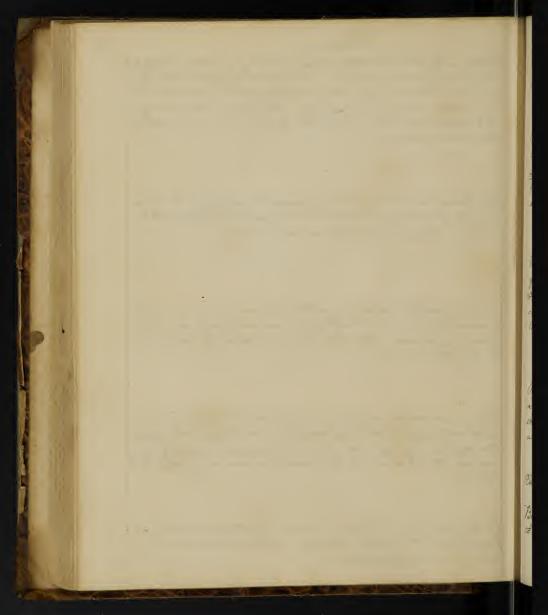
92.

Boro persons cannot be joined in a prosecution for perjuny the offence not joint. Str. 623.870.921.4 Burn 2402. Barran. 25. Corp. leg 4. To. n. 9.5. 39. R. g8. - Secus, of subornation, infra L. 12.880.

Subornation of perjung, is the offence of procuring another to commit perjung - but the sperjung must be actually committed. Years, no subornation. 1 star. 345-6. 4171. 137-8. 1 Redl. 41.57. 9. Gela. 72 3 mod. 122. Cro. J. 37. 2 m.c. n. 637.

Perjum , a substration of perjum, prinished, at G. L. variously - an = cientill mith death - afternand, bands kment, or cutting out the tongue - then forfeiture of goods - now, fine, I imprisonment, simulation to give underce. 471. 138.3 and . 183. Other penalties superadded, by state 1586.

Inciting one to commit perjury, it not being actually committed is punished at Q. Id, by fing, I infamous conferrat punishment. Bear. 325.b. It is a middenessoon.



I Er jury. It is a consequence of a conviction of perjury, at C.S., that the offerdor can never be a jury. 1mc x 227-8. 378, 363.

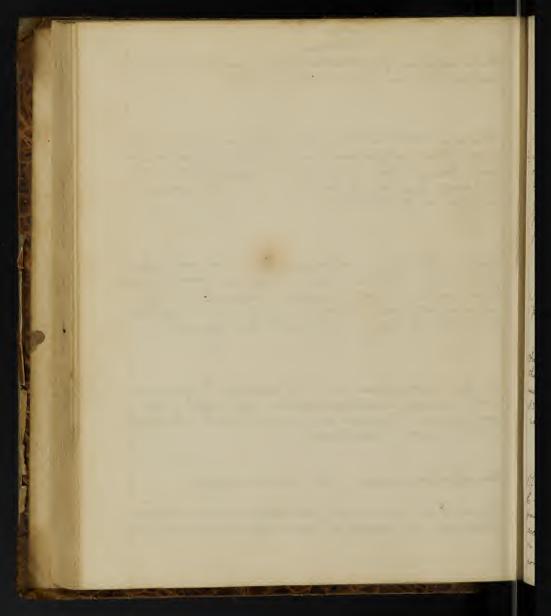
A variance in the indictment, by the omi from, or addition, of a letter, is not material, unless it makes another more. 84. "Undertoo" for "under-2000". Sicus, if it does - Ex. "air" for "heir". Comp. 229. 79. P. 237. Val. 650. Detam. 239. Dong. 184. n. Str. 184. Leach. 137. 145. _ when a feigned on an affidavit of 2m N. 571-13.

Under our flat. perjung , subornation of it, are punished by forfeeture of (185] imprisonment (now) in state prison, 6 months if a nale; In com. norkhouse, or gard, if a female. — Disqualified to take an oath in any ct of record. In case of inability to pay the forfeiture, to be set in the pillory one hour, with both ears nailed

Our feel. mentions perjung in a ct. of record only: But perjung in a court, of occord, or not;) is Junishable, in Cont, at C. E. by fine, imprisonment, & inability to give evidence: (But the imprisonment at C.S. is not in state proson.)

Take affirmation, by Quakers, in Cont., punished as perjuny.

By stat of Cont of one was up by takes mitness, milfully, + of purpose to take array any mans life, he whall be put to death - see "murror"

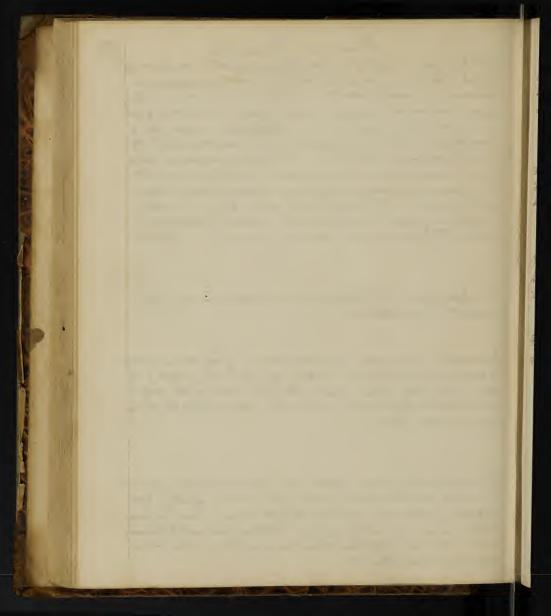


Of 0th in Cont. Sup! Of of all offerces punished mith death, loss of link - Is there any such punished there? Is there cropping? or landment? - also of adultory - exclusive jurisdiction. - Also of dirorce (not strictly criminal) - also exclusive jurisdiction of all crimes, prins to be a confinemate in state prison, except that of horse stealing; of which it has concurrent jurisdiction with Bit Cos 24. Of mots, concurrent mith Cosct. — It has also jurisdiction of high crimes + misclemesnors, but not exclusive - concurrent with Cosct. Is a concurrent with Cosct. I have for your to the above, (i.e. to those punished with least or state prison) but beyond the jurisdict of a postice, - Cosct. have, in gen!, exclusive jurisdiction. — I Com. 95.10%

No appeal from 6.9.0 to Superior, in Crim. cases, nor in qui tam presecung 1 Sr. 90. ours. 269.

Justices & have cognisance (originally exclusive of all crimes, of which the punishmet does not exceed the penalty of &7. - So, of the fit is the value of the goods be value of the goods be \$10. - tho' if the value of the goods be \$3.54. Whipping superadar - but if the value exceed \$10. he has no jurisdiction. That Q.

Of breaches of the peace, justices have cognisance unless aggranted & in which case the offend is bound over to C4Ct a menting a higher fruit than justices can inflict. In the flatter case, he has no jurise hictor, except as a set of inquiry. Justices of act as Cts of inquiry in all criminal cases, obere their own jurisdiction; + bins over, or commit, for trial. 1 on. 106.

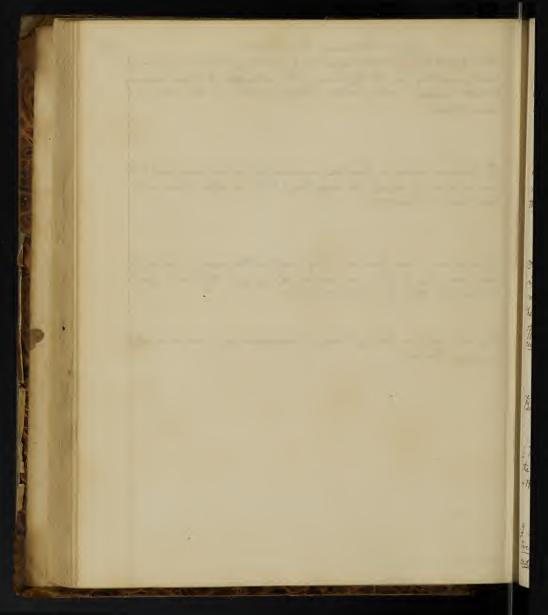


An appeal lies from the judgmt of a justice of to C. C. in all crim. cases, excepting for the offences of drunkersulfs, profone streaming salbath breaking - selling lottery tickets granted by another state, + I some others.

In criminal cases a firstices jurisdiction is not confined to the town, in which he andly. He may hold plea in other towns in the same County DRoot. 35%.

Offences are tried here, as in Eng., only in the County, in which they were committed: We have no feet on the subject. Hist. 401-2. Dong. 760. 8 mod. 328. Hely. 79-80. 2 M. SV. 373. 65T.

This rule holds, in Cont. as to crim! prosecutions, only, not as to actions qui tam. Herb 401.



Then one is arrested for a crime, o brought before a magistrate, (on charge of a crime not cognisable by him), the latter is to inquire into the facts charges, to aliceover whether he ought to be holden to trial, or not. 4 TH 290. 2 Sm. 289-90. Stat Q. 142.420.

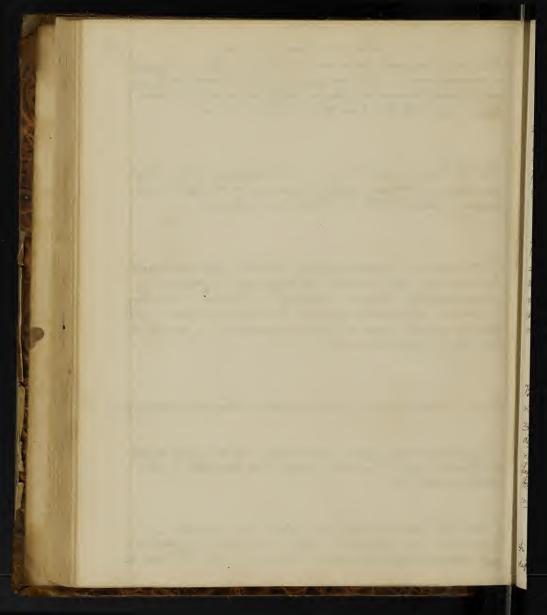
But he has no right to examine the prisoner at C.S. + therefore none here, - me having no feat to marrant it. In Eng! it is an = therized by feat. 2 & 3/18/2 m. 478/. 287, 290. 2 Sm. 390.

If, on enquiry, it appears clearly, that the offence changes has not been committed - or, that the change agt the prisoner is wholly ground left, he is to be discharged if 12.290. 28m. 389. - Steep he must be committed to prison, to be kept for trial, or, if the offence is bailable, give bail for his appearance - i e. furnish security for his appearance. Iid.

Bailing, is delivering one to his sureties, on their giving security of

! Regularly, for all offences below felony, (whether by e. L. or feat) the offendor ought to be bailed, unless it be prohibited by feat. 4M. 297-8. 20 Hal. 127.

2. At C.S. (according to 131.) all felonies were bailable even treason, & murder, according to others, all offences except homic cide. 474, 298. 2 Inst. 189. 1 Com. 408. 1 Hal 97. 1 Bac. 200. To that the

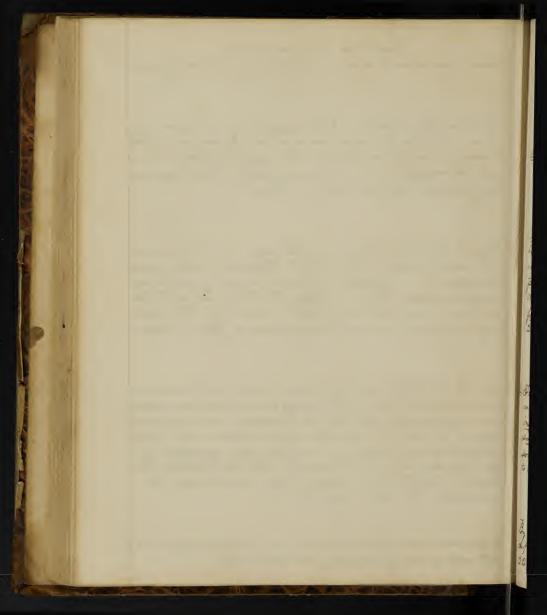


3. But the fat of Wester 1. 3 Edon I, denies bail in treason, I many Jelones - I further provisions are made on the subject, by States 23. Herr. VI. & 1 +2. Th. Am. (478. 298) In any case of felony, when the party has confessed, or is notoriously guilty. To, in arson mur. der, of accused not non bailable, in leng!

But the Eng. hats taking away the Joner of bailing, in certain cases, do not extend to Bik. in Eng? This court, or lany one of the judges of it, in vacation, may now bail, for any crome, even murder, + treason. Hely . 90. 4781. 299. 173 ac. 219-23. Inst. 169. Elal. 105. Str. 911. 1242. 2 Harr. 175-6. Comp. 883. 4 Bur 2/79. They extend only to subordinate, or com" bailing officers, as fifthe a justices.

But the Ct. of B. R. mill not admit to bail, in those cases, in which bail is prohibited by that, unless under special circumstances, in the party favor. Ex. Where the prosecutor has unreasonably delayed the trial - where the evidence appears very meakwhere the prisoner's life is in danger, from confinement of Leach. 122. 2 Harr. 157. 175-6. 5 mod. 454 5. 1094. 334. Falm. 558-9. 1 fid. 78. Stor. 49.543. Aolt. B. But in case of illness, it must arise from confinement. 1 Bac. 223_4. Comp. 383.

In prosecutions for offences, amounting only to midemes ross, at C.S. deft may appear by attorney. 1 mel 8.59. 4 TX. 375.



Hail in Oriminal Cases.

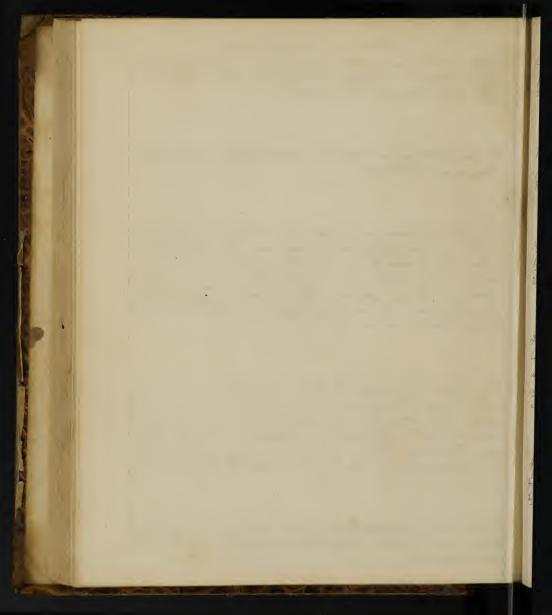
After verdict, however, agt the deft, he is not admitted to lail, unless productor consents. Plast. 159. Gre. 1 mer. 59. This rule has often been dispensed with in Cont. -

In Cont. all crimes are bailable, except capital, + contempts in open court. I Am. 39 1.

Dur Stat. supposed not to take from the Bup! It the poner of bailing, even for capital crimes - any more that Stat. Mestin: 1. in Eng. takes it from 13.72. Sup! Ot Supposed to have some powers as 13.72. (This, indeed, is expressly allowed by our stat - in treasury) - It is a gen rule, that he who is judge of the offence, may bail the accursed, ex officio, at O.J. 2.4. M. 420-5. 2.4 am. It of the socians

The officer, who arrests the person, Cannot, in Conto, take bail in crim cases. This is done by the magnetrate who acts as a C. of inquiry. After Commitment, for mant of bail, the flift mantake such bail, as the Ct of inquiry Las prescribed (Ct. Orn. 1805. Dickinson v. Kingsham) (Taken to the State, Count, or Torm, accorded to the jurisdiction i.e. as triable, in Sup? Ct, C.C. or by fistic)

By the C. L. if a magistrate of takes insufficient bail, othe prindipol does not appear, magistrate is fineable. 474.297.1 Bae. 227. 2 Ham 142.



Bail in Criminal Cases.

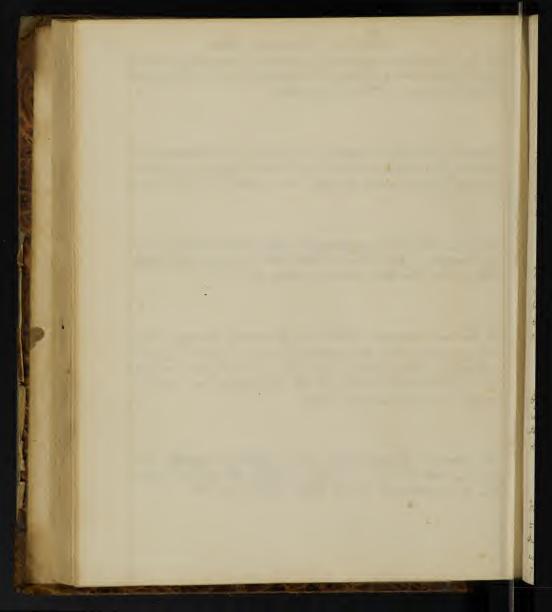
In Eng. 4 sureties are generally required, in case of felony; 2 for ingenior offences. 2 Har. 141. n. 1 Com 4/3. sec 2 Hal. 195. 10 Co. 101. - Not more than 2. required, Love, I believe in any case.

Refusing bail, where it ought to be granted, is a imademesnor in the justice, it Iff, at Q.S. - as such, punishable by fine, or americanent. The party injured has also his action. 1 Com 473 2 Ham 143. 1 Bac, 928. 1,0,6 ma. 179.

Granting back, when not grantable, is fourishable at & I, as a negligent excape, by fine. It is also fourished by several Engli Hateltes. 2. Ham. 142. 200. 1941. 590-7. 100m 473. 40 hast. 1 f 4, or, 179.

It has been decided, in Cont., on a prosecution for forger, the deft being out on bail), that the verdict courts not be received, unless he is present in Court (1 Rost 90) Du. Frag not the practice been different? I'm N. 59. 2781. 375. 1 Bac. 185. Is his presence wor recepting except on indictment for felong.

If a prisoner prosecuted for a given offerce, is acquitted, but proved on the trial, to be quilty of another, the court may detain him, to be prosecuted for the letter. Sarah. 300. 355.



Costs in Criminal Cases.

By our flat a person charges with , three for, any enine, the acquitted, pays the costs - if the prosecution may occasionally any unlarful, or blameable, conduct of his St. 143 4.

If not this occasioned he is dismissed without costs, or then it is paid, according to the oto law, out of the treasury, into which the first would have gone, if he had been fines. Also in gen! fines inflicted by sup? It go into blate Treasury. Non, by Stat. 1792. Costs arrang on public prosecutions in the 04.04 and said by the State treasury - or those recovered go into other treasury. Costs, on trials before a single magneticate, still paid out of town treasury.

Then costs arises in any criminal proceed, in which there is no acquittal, or conviction (Ex. person cannot be apprehended, or, being approbanded, escapes, without the officers fault, before he is committed) state pays - if the crime was cognizable by das? ct - Does the new state apply to this cape.

If the person sharged, I tried, is leable to pay costs, but unably, as not having sufficient prop? - bound out in service to any inhebitant of this state or of M. S. - But where it cannot be this obtained payable out of the state treasury of tried by this C.

When the evidence belone the court of engine is not sufficient to hold the accused to trial, costs cannot be taxed at him this 12. In Eng. no costs are paid, on either file, when the crown prosecutes; except in particular cases, by special provision of regulating. 7 of 12.367.

